

# Legislative Summary 2010 General Session

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This document is a publication of the Utah Prosecution Council

The following constitutes summaries of legislation passed during the 2010 General Session of the Utah Legislature relating to criminal law and criminal procedure and to county and city government.

This publication contains summaries only, not the full text of bills. There is no substitute for reading the actual legislative language. Enrolled copies of bills passed during the 2010 General Legislative Session can be obtained by going to the Utah Legislature's web site: [www.le.utah.gov](http://www.le.utah.gov). Please note that each bill number in this document is hyperlinked so that the enrolled copy may be accessed by clicking on the bill number. You may also call Utah Prosecution Council (UPC) at (801) 366-0202, or the Statewide Association of Prosecutors (SWAP) at (801) 366-7809. Either office will be glad to e-mail or fax a bill to you.

On or shortly after April 23, 2010, this publication will be downloadable from the Utah Prosecution Council web site: [www.upc.utah.gov](http://www.upc.utah.gov).

**UNLESS OTHERWISE INDICATED, LEGISLATION PASSED  
DURING THE 2010 GENERAL LEGISLATIVE SESSION  
BECOMES EFFECTIVE ON MAY 11, 2010.**

All legislation passed during the 2010 General Legislative Session is accessible over the Internet at the web site maintained by the office of Legislative Research and General Counsel: [www.le.utah.gov](http://www.le.utah.gov). Copies of enrolled bills can be down loaded from that site in a variety of formats: HTML, PDF, or WordPerfect Zipped. To down load a bill over the Internet, follow these steps.

1. Go to the web site [www.le.utah.gov](http://www.le.utah.gov)
2. Put your cursor on “Bills” in the left column and then;
3. Click on “Passed Bills” in the pop-up box that appears.
4. Scroll down and click on the number of the specific bill for which you are looking.
5. Locate the heading “Bill Text.” Next to “Enrolled,” under that heading, click on the format in which you wish to view and/or down load the bill.
  - HTML format is universally accepted by all web browsers but the formatting will be different than that of the actual bill.
  - PDF gives you the bill in exactly the same format as the original, but you need Adobe Acrobat Reader software to use PDF. That is free software which is almost certainly already loaded onto your computer. If it is not on your computer, you will probably receive a query on your screen asking whether you want to down load Adobe Acrobat Reader. If you have questions about Adobe, check with your computer person.
  - WordPerfect Zipped format also gives you the bills in original format if you use WordPerfect as your word processing software. To use it you will need to use “unzipping” software, which is also almost certainly on your computer. The advantage with this format is that, once downloaded, you can use the bill just like any other WordPerfect document. Again, if you have questions, see your computer person.
6. Once you have the bill on your screen you can read it, print it, or save it as an electronic file.

**As of May 11, 2010, the effective date of most legislation passed during the 2010 general legislative session, the *ONLY* place one will be able to access an updated text of the Utah Code is on the Utah State Legislature’s web site: [www.le.utah.gov](http://www.le.utah.gov).** The then current language of any code section or state constitutional provision will be available at that site. On the left side of the page is a column of links; move your cursor to “Utah Code/Constitution.” A small text box will pop up. Click on “Title/Chapter/Section” or on “Utah Constitution.” Links to the various titles of the Utah Code or articles of the Utah Constitution will appear. Scroll down to the title or article in which you are interested and follow the links from there. If you want to do a word search for specific text, click on “Keyword Search” and follow the instructions.

A digest of all legislation, including effective dates, an index by subject matter, an index by bill number, a listing of bills which did not pass, and other useful material is also on the

above cited legislative web page, and is published by:

The Office of Legislative Research and General Counsel  
436 State Capitol Building  
Salt Lake City, UT 84114

Phone: (801) 538-1032

The Utah Code 2010 Edition will contain all amendments made to the code during the 2010 General Session and any special sessions, together with a comprehensive index. It will likely become available in late summer. Utah Codes are published by both Lexis Law Publishing and Thomson-West. They can be contacted at:

<p>Lexis Law Publishing P O Box 7587 Charlottesville, VA 22906-7587</p> <p>Phone: (800) 562-1197 (toll free) Web site: <a href="http://www.lexisnexis.com/store/catalog/catalog.jsp?pageName=catalogProducts&amp;catId=993&amp;id=404">http://www.lexisnexis.com/store/catalog/catalog.jsp?pageName=catalogProducts&amp;catId=993&amp;id=404</a></p>	<p>Thomson-West Publishing Two N Central Ave - Ste 2650 Phoenix, AZ 85004</p> <p>Phone: 602-257-4207 Web site: <a href="http://west.thomson.com/store/Results.aspx?Ntx=mode+matchallpartial&amp;Ntk=KEYWORD-SEARCH&amp;Nty=1&amp;N=4294967049&amp;Ntt=utah+code&amp;Ntpc=1&amp;Ntpr=1">http://west.thomson.com/store/Results.aspx?Ntx=mode+matchallpartial&amp;Ntk=KEYWORD-SEARCH&amp;Nty=1&amp;N=4294967049&amp;Ntt=utah+code&amp;Ntpc=1&amp;Ntpr=1</a></p>
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# HOUSE BILLS

## COURT FEES FOR INMATES

**HB 10**

**Rep. Curtis Oda**

This bill refers to payment of fees in situations where prisoners file an initial divorce action or an action to obtain custody and also file an affidavit of impecuniosity. The Court is to review the affidavit and determine if the fees shall be waived or altered. If the prisoner is impecunious, the constable or sheriff shall serve the papers as if payment had been made. Finally, if the court determines that the prisoner is reasonably able to pay fees and costs, the order may enter, but is unenforceable until they have been paid in full.

## DRUG LAW DEFINITIONS AMENDMENTS

**HB 13**

**Rep. Trisha Beck**

This bill will not have a substantive impact in terms of penalties or elements. The bill creates standard definitions of terms “drug” “legend drug” “prescription drug” “prescribe” and “controlled substances” across Title 58. It also creates a “prescriptive device” definition. The helpful thing in doing this bill was simply learning and understanding the differences and overlap among these terms.

## JUVENILE TRANSFERS FROM JUSTICE COURTS

**HB 14**

**Rep. Kay McIff**

This bill amends 78A-7-106 as follows: “A justice court judge may transfer a matter in which the defendant is a child to the juvenile court for further proceedings [~~after judgment in the justice court~~] if the justice court judge determines and the juvenile court concurs that the best interests of the child would be served by the continuing jurisdiction of the juvenile court.”

## POST CONVICTION REMEDIES AMENDMENTS

**HB 19**

**Rep. Kay McIff.**

This Bill modifies the Judicial Code to clarify a statutory limitation on claims for relief under the Post-Conviction Remedies Act. This bill amends a section of the Post Conviction Remedies Act which lists grounds upon which relief may not be claimed and also lists an exception if there was a failure to timely raise the grounds for relief due to ineffective assistance of counsel. This change

was made to work in conjunction with a recently adopted rule by the Utah Supreme Court. In other words if it is was not raised previously then it is barred in Post Conviction Remedies unless it was because of ineffective assistance of counsel.

## **EXPUNGEMENT REVISIONS**

**HB 21**

**Rep. Julie Fisher**

Putting this bill together was a long, tedious process which the sponsor of the bill shouldered well. It is a complete reworking of Utah's expungement statute with the goal being understandability and proper enforcement. Total agreement by all interested parties was not feasible, but the bill comes far in its intended purpose. The clarifications accomplish the following:

1. The bill now contains a section that simply outlines the process for seeking a certificate of eligibility, which will be helpful to lay persons, employees of the bureau of criminal identification, attorneys, and judges alike.
2. It creates an understandable definition of "expunge" and what is required of an agency that receives an order of expungement.
3. It clarifies that a person is not eligible to obtain an expungement of an arrest unless the prosecutor *formally* declines the charge, or the statute of limitations has passed.
4. It delineates how many convictions a person can have expunged, and makes it clear that a criminal episode (no matter the number of counts in that criminal episode) is counted as one conviction for purposes of the statute.
5. It creates a fee for the application process.
6. It contains notice requirements for a prosecutor, any victims, or AP&P.
7. It allows an expunged record to be re-opened if a person is charged with a new felony, or is needed for sentencing, or is needed by a police officer in their own defense in a civil case arising out of the criminal episode.

## **WORKPLACE – DRUG AND ALCOHOL TESTING**

**HB 23**

**Rep. Edward Beck**

This is an amendment to an existing statute that authorizes the testing for drugs and alcohol in the workplace. The amendment provides that an employer is protected from liability for action taken against an applicant or employee as a result of a failed test. The employer is protected from liability even if the test is inaccurate if it can be established that the employer relied on upon the test in good faith. The protection from liability only exists if the statutory requirements are followed, a new one being that the lab performing the test is certified by the U.S. Department of Health and Human Services under the National Laboratory Certification Program. The amendment also provides for a rebuttable presumption that an employer is in compliance with the statute if the

employer's drug and alcohol testing program includes using a licensed physician who is trained in interpreting the test results

## **ECONOMIC DEVELOPMENT INCENTIVES ACT AMENDMENTS**

**HB 24**

**Rep. Brent Wallis**

Amends the Economic Development Act to define a “significant capital investment” as a capital of fixed asset with a purchase price of at least \$10,000,000 and requires specific documentation to apply for the applicable tax credit.

## **CONTROLLED SUBSTANCE DATABASE AMENDMENTS**

**HB 28**

**Rep. B. Daw**

Prescription drug abuse was one of the hot topics this year. 8 bills deal with ways to address the problem, which is severe. *In Utah in 2007, 317 people died as a result of prescription overdoses — nearly twice as many deaths as occurred due to overdoses from the traditionally feared street drugs.*

This bill creates the “Utah Controlled Substance Database Act” which requires that all practitioners, by October of this year, at least sign up to use the DOPL database. The bill outlines how the database should be used, with mandatory reporting of prescribed controlled substances by pharmacists, and describes what persons can access the database, and for what reasons, including law enforcement agents who can log on to search records to see if a person is “doctor shopping” — obtaining prescriptions from multiple doctors.

## **DRUG LAW AMENDMENTS**

**HB 30**

**Rep. Trisha Beck**

This bill adds clonazepam, commonly known as “Soma,” to Utah’s list of controlled substances as a schedule IV, making it illegal to possess without a prescription, or distribute unlawfully. Many people abuse Soma, with some reported deaths around the nation. The federal government will be scheduling it as a schedule IV as well later this year.

## **GROUNDWATER RECHARGE AND RECOVERY ACT AMENDMENTS**

**HB 33**

**Rep. Michael Noel**

HB 133 provides a process for filing for and obtaining proof of completion related to permits issued to recharge or recover water from aquifers. In either case, the permit holder must file a proof of completion with the state engineer establishing compliance with the permit. Upon review of that document, the state engineer will issue a recharge or recovery certificate which serves as prima facie evidence of the permittee's right to the recharged or recovered water. The certificate issued will then be recorded by the permittee with the appropriate county recorder.

## **WATER STORAGE PROJECTS**

**HB 34**

**Rep. Michael Noel**

This is another water bill that deals with the proof of completion of an application or change for a surface storage facility in excess of 1,000 acre feet that is constructed by a public water supplier. It requires a description of the facility as well as the use of the water with specific items to be addressed. It also provides for the issuance of a certificate consistent with the proof filed allowing the use by the applicant.

## **CONTROLLED SUBSTANCE DATABASE - REPORTING OF PRESCRIBED CONTROLLED SUBSTANCE OVERDOSE OR POISONING**

**HB 35**

**Rep. B. Daw**

Beginning July 1, 2012, if a person over age 12 is admitted to the hospital for an overdose of a prescription medication, the hospital will be required to, within 30 days, send a report to DOPL of the overdose, to include the patient's name, and the controlled substance used. DOPL is then required to send a notification of that overdose out to the prescribing practitioner(s).

## **CS DATABASE - REPORTING CONVICTION FOR DUI**

**HB 36**

**Rep. B. Daw**

Beginning July 1, 2012, Utah courts, on a monthly basis, will be required to send a report to DOPL of a conviction for DUI where there is evidence the person was driving under the influence of a prescription drug, to include the case number, the person's name, and their date of birth. After



receiving such a report, DOPL is required to send that information on to the practitioner that prescribed the drug.

## **SCHEDULING OF CONTROLLED SUBSTANCES**

### **HB 38**

**Rep. Paul Ray**

HB 38 creates the Controlled Substances Advisory Committee. This Committee has been given the duty to advise the legislature on the scheduling of substances. The recommendations of the Committee shall include placing a substance in the statutory schedule of controlled substances, changing the schedule of a controlled substance, and removing controlled substances from the schedule.

The Committee will consist of 11 members, including the director of the Department of Health, the Commissioner of the Department of Public Safety, physicians, a pharmacist, a psychiatrist, a treatment professional, and a prosecutor. In determining if a substance should be placed on the schedule, the Committee shall consider, among other factors, the potential for abuse of and dependence on the substance, the accepted medical uses of the substance, and the federal schedule of the substance.

## **CONSTABLES AMENDMENTS**

### **HB 41**

**Rep. Curtis Oda**

Constables from any jurisdiction may now contract with a city or county justice court for services. In theory, the Washington County Constable could contract for process service in Rich County. The more likely application is that a city justice court may choose from constables' offices in adjoining cities or in the county in which the city is situated.

## **REFERENDUM BALLOT PROPOSITION**

### **HB 44**

**Rep. Fred Hunsaker**

This bill modifies the Election Code to amend the manner in which a ballot proposition is worded for a statewide or local referendum. It clarifies what a "for" or "against" vote means. This bill should be reviewed if you have a referendum petition filed.

## **SALES AND USE TAX MODIFICATIONS**

**HB 50**

**Rep. Wayne Harper**

This bill clarifies that for purposes of the applying the Sales and Use Tax Act, the location for a transaction involving a prepaid calling service or prepaid wireless calling service is the address from which the service is provided or the address associated with the mobile telephone number. The bill also updates the definition of “Bundled transaction” to conform with the Streamlined Sales and Use Tax Agreement.

## **PROPERTY TAX EXEMPTION FOR WATER FACILITIES**

**HB 54**

**Rep. Patrick Painter**

This bill enacts a property tax exemption for real and personal property owned by a nonprofit entity and used to irrigate land, provide domestic water, or provide water to a public water supplier. The intent of the bill is to place nonprofit water companies on par with municipal water companies. The bill is conditioned on passage of a constitutional amendment authorizing the bill’s enactment, which will be voted on in the 2010 general election.

## **CAMPAIGN FINANCE REVISIONS**

**HB 59**

**Rep. Keith Grover**

The current statute requires that financial statements must include all expenditures made by corporations and political issue committees that have occurred up to three (3) days before the filing of those financial statements. This amendment extends that to a five (5) day period before the filing date of the financial statements.

## **WATER CONVEYANCE FACILITIES SAFETY ACT**

**HB 60**

**Rep. Fred Hunsaker**

This bill addresses water companies that have both shareholders and open methods of conveyance, such as canals and ditches. This bill is in response to some of the recent canal failures that we have experienced in Utah. It establishes that if the water company will provide a management plan, including a risk analysis and an emergency response plan with its city or county, the company would be eligible for financial assistance for system improvements from the state.

The bill also provides that the management plan would be protected under GRAMA

## **PENALTIES FOR VIOLENT CRIME IN PRESENCE OF A CHILD**

**HB 62**

**Rep. Janice Fisher**

This bill creates a new class B misdemeanor for the commission or the attempted commission of a violent crime in the presence of a child. The bill specifies that “in the presence of” means in the physical presence of a child younger than 14 years of age and having knowledge that the child is present and may see or hear the commission of the violent offense. Regardless of the number of children present during the commission of the violent crime, only one count of Violence in the Presence of a Child may be charged

For the purposes of this statute, “violent offense” does not include a domestic violence offense as defined in Section 77-36-1.

## **HABITUAL WANTON DESTRUCTION OF WILDLIFE**

**HB 68**

**Rep. Curtis Oda**

This bill is aimed at serious repeat poaching offenders. It enacts the new section 23-20-4.7, which provides that:

“A person is guilty of habitual wanton destruction of protected wildlife if the person:

- (a) takes a big game animal in violation of Section 23-20-4; and
- (b) within seven years of the day on which the violation described in Subsection (1)(a) occurs, has twice been convicted of taking a big game animal in violation of Section 23-20-4.

For purposes of this section, “convicted” includes a guilty adjudication, a guilty plea, a no contest plea and a guilty or no contest plea entered pursuant to a plea in abeyance agreement. Habitual wanton destruction of protected wildlife is a 3<sup>rd</sup> degree felony.

## **STATE ENGINEERS PLUGGING OF WELLS REPEALER**

**HB 69**

**Rep. James Gowans**

This bill repeals the state engineer's authority to plug artesian wells that are wasting water.

## **ASSESSMENT AREA AMENDMENTS**

**HB 75**

**Rep. Gage Froerer**

This bill requires that a governing body (city or town council, for example) adopt a resolution or ordinance designating an assessment area before the governing body may levy an assessment. The

bill also places a sunset provision of five years on assessment areas that pay for operation and maintenance costs or economic promotion activities, requiring the governing body to renew these assessments, rather than allowing them to go on into perpetuity. The bill clarifies when a governing body may levy more than one assessment in a designated assessment area.

## WEAPONS REVISIONS

### HB 78

Rep. Stephen Sandstrom

The short description is that HB 78 makes no substantive changes in the justification of force in defense of person (76-2-402) or threatening with or using a dangerous weapon in a fight or quarrel (“brandishing”) 76-10-506.

The longer explanation is that HB 78 addresses both sections in an attempt to clarify the law on some difficult self defense issues.

76-2-402 is essentially unchanged except for some cosmetic changes to make it clear when the topic changes from non-deadly force to deadly force.

Brandishing 76-10-506 has new language dealing with three general areas.

- First; “threatening manner” is defined to not include “informing another of the actor’s possession of a deadly weapon in order to prevent what the actor *reasonably perceives* as a possible use of unlawful force by the other...” This is a description of the most difficult decision making situation facing a person who carries a firearm for self defense. That is the prospect of being engaged in a non-deadly fight. In that situation the person who is armed is often not justified in threatening with the weapon but also faces a serious problem if the other person engages in a fight because there is already a weapon present. In order to avoid escalating violence where the other person might get control of the weapon most deadly force instructors suggest a last ditch tactic of explaining that the person is armed and that the hostilities need to stop so that no serious problems emerge. That situation raises a fine line between such an explanation and threatening the use of the deadly weapon. **[Tactical note: this is why people who tend to get into fights should never carry deadly weapons!]** The provision allowing the informing of others of the presence of the deadly weapon is tempered by a requirement that the actor not engage in any of the activities described in 76-2-402(2)(a), such as provoking the use of force, being the aggressor, etc.
- The second issue addressed in the brandishing statute is a positive statement that a person is justified in threatening the use of a dangerous weapon or drawing or exhibiting a dangerous weapon if a person reasonably believes the action to be necessary and is in compliance with 76-2-402. Again that is nothing more than a restatement of current law.

- The third issue with which this section deals is “open carry.” The language states that “threatening manner” does not include “the possession of a dangerous weapon, whether visible or concealed, without additional behavior which is threatening...”. Although current law quite clearly allows open carry, the political fact is that many people do feel threatened when they see one openly carrying a firearm in an urban area. They then call the police who come and discuss the matter with the individual who is probably making a political statement anyway. The potential for making a bad arrest is rather high. It may be a good idea to go over these issues with the police officers in your area. **[Another tactical note: a person licensed to carry a concealed weapon who decides to carry the weapon in the open on city streets is giving up the advantage of surprise - one of the key principles of personal defense.]**

## **ELECTRONIC CIGARETTE RESTRICTIONS**

**HB 88**

**Rep. Rhonda Menlove**

Electronic cigarettes are small devices resembling a cigarette but which contain a battery and an atomizer. Cartridges containing nicotine are placed in the device creating a mist which is inhaled like regular cigarette smoke. They are represented by the industry to be a safer alternative to cigarette smoking in that they do not create second hand smoke and do not have other harmful chemicals. They also do not have much of a smell. They are represented to be viable smoking cessation devices.

The purpose of the bill is to regulate them in much the same manner as regular cigarettes. “Electronic cigarette” is defined in 76-10-101. It is a class A misdemeanor to use an altered driver’s license to purchase an electronic cigarette 53-3-229 or a state ID card 53-3-810. Several other statutes are conformed to include electronic cigarettes in areas dealing with tobacco products. They are also prohibited in mental health and correctional facilities under 76-8-311.3. Knowingly, intentionally or recklessly or with criminal negligence providing an electronic cigarette to a person under 19 years of age is a class C misdemeanor on the first offense and a class B on the second offense with a class A on subsequent offenses.

## **MOTORCYCLE & OFF-HIGHWAY VEHICLE AMENDMENTS**

**HB 93**

**Rep. Rhonda Menlove**

~~All Many Some~~ A few motorcyclists have an insatiable *need for speed*. They just can’t drive fifty-five. This bill requires courts to waive \$8.00 of a traffic fine (other than DUI) when the biker or OHV operator over 18 was wearing a helmet at the time of committing the violation. The bill also makes it plain that failure to wear a brain bucket is not evidence of negligence, failure to mitigate, or of damages in a civil lawsuit.

## **UNIFORM FISCAL PROCEDURES ACT AMENDMENTS**

**HB 94**

**Rep. Fred Hunsaker**

This bill amends the public notice and hearing requirements for the uniform fiscal procedures of towns, cities, and counties. This bill requires the governing body of a county or city to give public notice and hold a hearing before amending a budgetary fund or increasing a budget appropriation of any budgetary fund. Notice and public hearing are also required before allocating or transferring funds between a utility enterprise fund and another fund. Allows the notice involving utility enterprise funds to be printed on the utility bills. Requires notices to be published in the Utah Public Notice Website.

## **CERTIFICATION OF VOTING EQUIPMENT**

**HB 95**

**Rep. Douglas Aagard**

This bill amends a provision relating to the certification of voting equipment. It changes certification from the Federal Election Commission to certification by the “Election Assistance Commission”. The Election Assistance Commission is defined in Section 20A-1-102 as the commission established by federal Help America Vote Act of 2002.

## **REDUCED SPEED SCHOOL ZONE AMENDMENTS**

**HB 103**

**Rep. Stephen Sandstrom**

This bill provides that if a school crosswalk is established at a signalized intersection, a city or county highway authority may reduce the speed limit at the signalized intersection to 20 miles per hour for a highway under its jurisdiction.

## **ANIMAL SHELTER AMENDMENTS**

**HB 107**

**Rep. Jennifer Seelig**

Under this bill a municipality or county which maintains an animal shelter is given the discretion to determine if the entity will provide animals to an institution for research purposes. The former statute contained mandatory language requiring the delivery of animals upon request of the institution. The statute also requires that prior to providing an animal to an institution, the entity must maintain the animal for at least five days or the minimum provided by local ordinance, whichever is longer; that the animal has not been claimed or redeemed by the animal’s owner or other entitled party; and the entity must make a reasonable effort to find the owner and, if not found, make the animal available to others during the impound period.

## **VOLUNTEER GOVERNMENT WORKERS ACT DEFINITIONS**

**HB 109**

**Rep. Jackie Biskupski**

This bill merely amends and expands the definition of "compensatory service worker" in the Volunteer Government Workers Act to include a person who is performing public service as a condition, or as part of, incarceration or a plea. The previous version of the definition, which was retained, already included a person who performs a public service for an agency as a condition of a sentence, diversion, probation, or parole.

## **COUNTY JAIL INMATE MEDICAL COSTS**

**HB 110**

**Rep. Bradley Daw**

Inmates in county jails are now required to participate in the costs of medical care, treatment, hospitalization or transportation if they can pay either by their own resources or their ability to pay. This may be done by deducting the cost from the inmate's cash account held by the jail even in the case of a subsequent incarceration in the same facility within three years of the date of the expense. The county may also place a lien against any personal property being held by the jail. It further mandates the inmate to cooperate with the jail seeking payment (whatever that means).

## **SUPREME COURT REVIEW OF AN INITIATIVE OR REFERENDUM**

**HB 112**

**Rep. Brad Dee**

This bill amends provisions that establish time requirements for the Supreme Court to review an issue related to an initiative or referendum. It deletes certain statutory time requirements for the Supreme Court to review initiative and referendum issues. The bill also authorizes the Supreme Court to refer certain fiscal impact estimate issues to a master for examination and a report. Statutory time requirements for the governor and local legislative bodies dealing with initiative and referendum are also modified.

## **COUNSEL FOR INDIGENTS IN JUVENILE COURT PROCEEDINGS**

**HB 115**

**Rep. Kraig Powell**

This bill was prompted by the observation of Jonathan A. Stearmer, Deputy Duchense County Attorney, that counties were paying for the work of juvenile court-appointed counsel that did not

relate to the state-initiated action for which counsel were originally appointed. Unlike district court, in which discrete legal matters are filed under separate case numbers and indigent defendants are only entitled to court-appointed counsel in state-initiated actions, all matters relating to a juvenile are filed under the same case number, and juvenile court-appointed counsel may file petitions on behalf of their client that are directed at private parties, not the state. For example, an attorney who is appointed to represent an indigent parent at a child welfare proceeding may be asked by that parent to file a petition to modify a custody decree.

HB 115 provides significant cost savings to the counties by limiting the scope of services for which the county is responsible. The bill clarifies that the county is only responsible for the cost of work that is directed primarily at the state or the guardian ad litem, and directs juvenile judges to order clients of appointed counsel to reimburse the county for all other work. It is important to note that this section does *not* apply to work that is specifically undertaken to defend against the filing of a petition to terminate parental rights, regardless of who filed the petition.

## **POLITICAL SUBDIVISION FACILITY ENERGY EFFICIENCY**

**HB 116**

**Rep. Fred Hunsaker**

This bill creates a new chapter in Title 11(11-44) and authorizes political subdivisions to enter into energy savings agreements. If a political subdivision elects to do so, this bill allows some relief from the strictures contained in the state procurement code.

## **ECONOMIC DEVELOPMENT INCENTIVES MODIFICATIONS**

**HB 118**

**Rep. Wayne Harper**

Amends the economic development provisions related to the Industrial Assistance Fund to include provisions dealing with the potential relocation of companies outside of the State of Utah, if the relocation would create significant detrimental economic impact to “the state as a whole, regions of the state, or specific components of the state.” Also modifies qualifications to receive assistance from the Fund, modifies the amount of dollars earmarked for the Fund, and increases the percentage of the Fund amount which can be used “to take timely advantage of economic opportunities as they arise.”

## **EMERGENCY MEDICAL SERVICES ACT TRANSPORT AMENDMENT**

**HB 121**

**Rep. Gregory Hughes**

Having separate licenses for 911 ambulance and paramedics services from non-911 transport



patient and services is more specifically addressed under this legislation. The amendment then allows the state to issue a license to non-911 service provider in the situation where a political subdivision has only contracted for 911 services. The bill further establishes a complaint procedure for non-911 service providers, permitting the political subdivisions to address those concerns, including issuing RFP's and awarding contracts for those services. If the political subdivision responds to a request for proposal to provide those non-911 services and transportations, the state is then the reviewing entity.

## **CAMPAIGN FUNDS EXPENDITURE RESSTRICTIONS**

**HB 124**

**Rep. Tim Cosgrove**

This bill modifies the Campaign and Financial Reporting Requirements by amending provisions related to personal use of campaign monies. This bill defines "personal use expenditure" and provides a list of authorized and prohibited uses of campaign funds. It also provides for enforcement and assessment of administrative penalties by the lieutenant governor and prohibits a candidate or an officeholder from using campaign contributions for personal use expenditures.

## **KIDNAPING AND SEX OFFENDER REGISTRY AMENDMENTS**

**HB 125**

**Rep. Ron Bigelow**

This bill removes two subsections of simple kidnaping from the list of offenses that require registration under Section 77-27-21.5, the Sex and Kidnap Offender Notification and Registration Act (SONAR). While it removes subsections (1)(a) and (b) of kidnaping, subsections (1)(c), (d), and (e) still require registration.

The two sections removed are subsection (1)(a), to detain or restrain the victim for any substantial period of time, and subsection (1)(b), to detain or restrain the victim in circumstances exposing the victim to risk of bodily injury. The subsections that still require an offender to register are: subsection (1)(c), to hold the victim in involuntary servitude; subsection (1)(d), to detain or restrain a minor without the consent of a minor older than 14, but younger than 18; and subsection (1)(e), to move the victim any substantial distance or across a state line. In addition to subsections (c), (d) and (e), a conviction for Aggravated Kidnaping or Child Kidnaping also require registration.

***Practice note:*** *To ensure that an offender is required to register for a conviction of one of these subsections of kidnaping the violation of the specific subsection should be included in the record, the court minutes, and in the Judgment and Conviction.*

## **RELEASE OF COURT DOCUMENTS AND CHILD INTERVIEWS**

**HB 133**

**Rep. Lorie Fowlke**

This bill limits the distribution of certain child interviews and evaluations used in court proceedings.

This bill adds the video and audio recordings of Children’s Justice Center interviews to the list of records classified as “protected” under GRAMA. The new statute specifies that copies of Children’s Justice Center interviews may not be distributed, released, or displayed to anyone without a court order, limiting the further distribution of the interviews. The statute specifies that the prosecutor, the Attorney General’s child protection division, law enforcement agencies, and the attorney for the child who is the subject of the interview may receive a copy of the interview without a court order, but may not distribute the interview further. However, in a criminal prosecution, the prosecutor may release the interview to the defense attorney or a pro se defendant pursuant to a valid request for discovery.

A violation of the court order or distribution of the interview without a court order is punishable by contempt during the course of the criminal case, or class B misdemeanor if the court no longer has jurisdiction over the defendant.

The same penalties apply to the distribution of private, protected, or sealed document provided to a pro se litigant in the course of an action.

## **HAZING PENALTIES**

**HB 138**

**Rep. Carol Spackman Moss**

Hazing – 76-5-107.5 – becomes a class A misdemeanor if it involves either the consumption of alcohol or the consumption of a drug or a substance as defined in 76-5-113. In section 113, “drug” essentially means any prescription drug. “Substance” is a controlled substance, poisonous substance, or anything which, if administered, would likely cause bodily injury. The remainder of the existing hazing statute remains unchanged.

## **EMERGENCY AND DISASTER MANAGEMENT AMENDMENTS**

**HB 139**

**Rep. Curtis Oda**

The plans developed by local health departments in response to the 2009 H1N1 flu pandemic identified gaps in various emergency authorities. One of the deficiencies identified, was the inability of local health departments to distribute drugs regulated by the Pharmacy Practice Act. In addition, various local governmental entities acquired antivirals for critical personnel, but were unable to

dispense the drugs due to their inability to “prescribe” pharmaceuticals. In addition, local health departments receiving drugs from the Strategic National Stockpile were unable to distribute the drugs. House Bill 139 amends § 63K-4-401 of the Disaster Response and Recovery Act to address the governor’s powers during a state of emergency, including: suspending or modifying a statute or administrative rule or suspending the enforcement of a statute during a state of emergency under certain circumstances.

## **RECREATIONAL USE OF PUBLIC WATER ON PRIVATE PROPERTY**

**HB 141** **Rep. Kay McIff**

This is the latest effort to legislatively define the relative rights of persons using streams for recreational purposes, such as fishing or floating, and those of private property owners who own the land through which the stream flows, including the streambed. The legislature has been working on this issue ever since the Utah Supreme Court issued its opinion in *Conatser v. Johnson*, 2008 UT 48, 194 P.3d 897 (Utah 2008). In that case the court said:

“We hold that the scope of the [public’s] easement [in state waters] provides the public the right to float, hunt, fish, and participate in all lawful activities that utilize the water. We further hold that the public has the right to touch privately owned beds of state waters in ways incidental to all recreational rights provided for in the easement, so long as they do so reasonably and cause no unnecessary injury to the landowner.”

(Footnote 1 says: “We use the term “touch” to encompass all aspects of touching, including walking and standing on the privately owned beds of state waters.”)

As a long time practicing lawyer and a retired 6<sup>th</sup> Judicial District Court Judge, Rep. McIff is well qualified to understand the legal issues. He and the legislature came down four square on the side of private property owners.

This bill contains no criminal provisions but, because law enforcement agencies are often called upon by property owners to do something about persons using waterways that pass through private property, they and public attorneys should be aware of its provisions.

The bill overtly seeks to at least partially overrule the holding in *Conatser*, that persons have the right to wade, walk and stand on the privately owned beds of state waters. As its legal basis for so doing, the legislature sets out the following points.

- The Utah Constitution's private property protections obviate government's broad recognition or grant of a public recreation easement to access or use public water on private property.
- General constitutional and statutory provisions declaring public ownership of water and recognizing existing rights of use are insufficient to overcome the specific constitutional protections for private property and do not justify inviting widespread unauthorized invasion of private property for recreation purposes where public access has never previously existed.
- The court in *Conatser* did not address the constitutional prohibition of taking or damaging private property without just compensation.

- Legislative inaction following the 1982 decision in *J.J.N.P. Co. v. State*, 655 P.2d 1133 (Utah 1982) forms a compelling foundation for the legislature to affirm a limited right to float on public water without violating the constitutional protections of the underlying private property.
- Real and substantial invasion of private property rights first occurred when the court recognized in *Conatser* a right by the public to physically occupy the land for an indeterminate time and for a wide range of activities, against the owner's will and without just compensation.
- The Legislature intends by this legislation to foster a restoration of the accommodation existing between recreational users and private property owners before the decision in *Conatser* and to affirm a floating right recognized by the court in *J.J.N.P. Co. v. State*.

Having stated the legislature's position and intent, the bill goes on to set some guidelines.

#### Floating:

- If the streambed and the adjacent land is publically owned, you may float, wade, portage, etc. to your heart's content, so long as you don't cause damage and are doing so withing the law.
- If the streambed and adjacent property is privately owned, but the stream is public water, you may float to your hearts content so long as any touching of the stream bed or banks is incidental, such as is required for safe passage and continued movement. Any necessary portage around a dangerous obstruction in the water must be accomplished in a manner that is most direct, least invasive and closest to the water.
- In exercising this floating right, you must enter and exit the water at a point on public property, or on private property with permission of the owner, and you may not stop on private property.
- The bill also makes it clear that you may fish in public waters while floating through private property.

#### Wading – as in walking down the middle of the stream while fishing or hunting:

- If the streambed and adjacent property is publically owned, go for it, so long as you follow applicable laws and regulations.
- But, if the streambed and adjacent property is privately owned, get the owner's permission. The bill provides that a person may access and use a public water on private property for any lawful purpose *with the private property owner's permission*. A person may not access or use public water on private property for recreational purposes other than floating if the private property is property to which access is restricted.
- Essentially, according to the legislature, the same rules apply to walking along a privately owned streambed to fish or hunt as apply to hunting or fishing on any other private property.

Public recreational access is established if the private property has been used by the public for recreational access (floating, fishing, or waterfowl hunting, and nothing else) for 10 consecutive years (as of 1982), which is continuous (change in seasons doesn't stop time from running), open and adverse. A property owner's overt act to interrupt uninvited access restarts the 10-year period.

The bill allows for a quiet title action to be filed by any person, to establish a right to public

recreational access. Multiple claimants and owners may be involved in a single action. The burden of proof is on the claimant to prove the existence of a right to public recreational access or floating access by clear and convincing evidence. However, such an action can not be filed until May 10, 2011. Once a landowner has obtained a favorable judgment in such an action, he is not subject to subsequent actions from other recreational users.

A private property landowner may file an action for injunctive relief, which is in addition to a remedy for trespass (the May 10, 2011 date relating to quiet title actions does not apply to this court action—it can be filed in 2010). A private landowner that owns the property adjacent to and lying beneath a public waterway can also place a fence across a public waterway for agricultural, livestock, or “other lawful purposes.” The fence may not create an unreasonably dangerous condition to the public lawfully using the public water, and the landowner shall allow placement of a ladder or gate on the fence, or allow portage around the fence.

There may be more legislation to come on this subject. Senate Bill 281 creates a legislative task force, made up of six members from each legislative house, to study public rights on public waters. The task force must complete its work no later than November 30, 2010.

## **EMINENT DOMAIN AUTHORITY**

**HB 143**

**Rep. Christopher Herrod**

This is one of the state/federal supremacy challenges created this year by the legislature. Here the State is given the power to condemn federal property that has not gone through the process of the legislature permitting federal acquisition under the United States Constitution. It also exempts this condemnation proceeding from the negotiation or arbitration requirement, the damage provisions if the state fails to commence some construction or use, and the sale requirements for condemned property that is claimed to be surplus property.

Everyone, including the sponsor, realizes that the constitutionality of this bill is doubtful. It was passed specifically to try to set up a U.S. Supreme Court challenge to federal ownership of most of Utah.

## **LAW ENFORCEMENT BY FEDERAL LAND MANAGEMENT AGENCY**

**HB 146**

**Rep. Michael Noel**

HB 146 deals with the authority of certain federal law enforcement officers to enforce Utah law. As a result of this bill, federal employees may only enforce Utah law as dictated by contract with state or local law enforcement agencies, and specifies that those contracts may not extend beyond two

years. “Federal employees” are defined as employees of the Bureau of Land Management, the United States Forest Service, or the National Park Service.

The bill states that federal employees may not base citation or arrest on the Utah Code or county or municipal ordinances with the intent to prosecute in the federal criminal justice system, unless federal statute expressly provides for such prosecutions.

Additionally, the bill requires that county sheriffs regularly review the duties and the activities of federal agencies that have law enforcement responsibilities that are acting within the county to ensure compliance with this section. Sheriffs shall annually report the findings of their reviews to the county or district attorney. For purposes of this requirement, federal agencies only include the Bureau of Land Management, the United States Forest Service, or the National Park Service.

The statute also states that federal employees may only enforce laws consistent with the Constitution of the United States– it is important to note that law enforcement officers, state or federal, do not have the authority to make determinations as to the constitutionality of either state or federal laws.

## **ADMINISTRATIVE SUBPOENA AMENDMENTS**

**HB 150**

**Rep. Bradley Daw**

This bill expanded the use of Administrative Subpoenas for cases involving Child Kidnaping and Stalking in addition to Sexual Offences Against Minors. It also expands the definition of what an electronic communication entails. Instead of just covering computers it now covers a more broad range of electronic communications.

## **VOTER REGISTRATION AMENDMENTS**

**HB 161**

**Rep. Rebecca Chavez-Houck**

This bill amends a provision relating to voter registration. The bill authorizes the lieutenant governor to compare the statewide voter registration database with information submitted by a registered voter to a state agency to identify a change of a name or address. It also requires the lieutenant governor to notify the county clerk of a change of name or address of a registered voter and the county clerk is required to update the voter registration and notify the registered voter.

## **OFF-HIGHWAY VEHICLE AND STREET-LEGAL ALL-TERRAIN VEHICLE REVISIONS**

**HB 179**

**Rep. Michael Noel**

This bill makes some minor revisions to the big off-highway bill that was passed during the 2008 legislature. It:

- repeals the requirement that a street-legal all-terrain vehicle only be operated on a highway with one lane in each direction; but
- provides that a street-legal all-terrain vehicle may not be operated on an interstate freeway or a limited access highway;
- provides that an off-highway vehicle accident shall be reported in accordance with the motor vehicle accident reporting requirements;
- provides that an all-terrain type II vehicle is eligible for an off-highway implement of husbandry sticker; and
- provides that an off-highway vehicle owned and operated by a state government agency is exempt from the non-resident permit requirements if the operation within the state is within the course and scope of the duties of the agency.

## **CONSTRUCTION AND FIRE CODE RELATED AMENDMENTS**

**HB 183**

**Rep. Michael Morley**

This bill primarily provides clarification for the adoption procedure of the state recognized fire code. It adopts a similar amendment process as to the other applicable construction codes. The ability of cities to have a more restrictive fire code is still permitted however, the notification process to the state has been altered slightly. If the political subdivision desires to have a more restrictive provision in its code, it must notify the newly created board in writing at least thirty (30) days before the enactment of the ordinance, and thereafter providing to that board a copy of the enacted ordinance along with a description of the particular public safety need that was the basis for the more restrictive ordinance.

## **POST AMENDMENTS**

**HB 187**

**Rep. Carl Wimmer**

This bill contains critical clean-up language that smooths the rule-making process and brings existing reality into harmony with applicable law and rules. A new feature of the Peace Officer Standards and Training (POST) statute allows a peace officer to voluntarily relinquish peace officer certification. Once the officer does that, he or she may not reapply to POST to be certified as a peace officer in Utah. The bill also clarifies the basis upon which the POST Council may suspend or revoke certification of a peace officer, including any of the following:

- willful falsification of any information to obtain certified status;
- physical or mental disability affecting the peace officer's ability to perform duties;
- addiction to alcohol or controlled substances unless the peace officer reports the addiction to the employer and the director; and
- violation of a state or federal criminal law.

The mandatory responsibility of chiefs, sheriffs and other public safety executives to report certain alleged conduct is expanded. An agency must investigate any conduct of a peace officer that would be grounds for suspension or revocation and report the conduct to POST, if the an investigation shows the allegation to be true.

## **CLOSED MEETINGS AMENDMENTS**

**HB 189**

**Rep. Patrick Painter**

This bill clarifies that the discussion of the purchase exchange or lease of any form of water right or water shares is an appropriate item for a closed meeting. It adds the terms "water right or water shares" to the "real property" sentence in the code.

## **HOMICIDE PENALTY AMENDMENT**

**HB 195**

**Rep. Carl Wimmer**

HB 195 amends the capital homicide sentencing proceeding statute to clarify that the minimum sentence for aggravated murder is a prison term of 25 years and which may be for life. The capital homicide sentencing statute (76-3-207) is now consistent with the capital felonies statute penalty (76-3-206) and the noncapital aggravated murder penalty statute (76-3-207.7).

## **CUSTODIAL INTERFERENCE AMENDMENTS**

**HB 197**

**Rep. Carl Wimmer**

In this bill the legislature completely repealed old 76-5-303, custodial interference, and replaced it with new language, albeit in the same section of the code. The new language provides that  
 “A person who is entitled to custody of a child is guilty of custodial interference if, during a period of time when another person is entitled to visitation of the child, the person takes, entices, conceals, detains, or withholds the child from the person entitled to visitation of the child, with the intent to interfere with the visitation of the child;”

and conversely;

“A person who is entitled to visitation of a child is guilty of custodial interference if, during



a period of time when the person is not entitled to visitation of the child, the person takes, entices, conceals, detains, or withholds the child from a person who is entitled to custody of the child, with the intent to interfere with the custody of the child.”

Custodial interference is a class B misdemeanor unless the person, prior to committing the new act, has been previously twice convicted of custodial interference, in which case it is a class A misdemeanor. Custodial interference becomes a 3<sup>rd</sup> degree felony if, during the course of the custodial interference, the actor removes, causes the removal, or directs the removal of the child from the state.

In addition to the affirmative defenses described in Section 76-5-305, this bill provides that it is an affirmative defense if:

- (a) the action is consented to by the person whose custody or visitation of the child was interfered with; or
- (b) (i) the action is based on a reasonable belief that it is necessary to protect a child from abuse, including sexual abuse; and
- (ii) before engaging in the action, the person reports his or her intention to so act, and the basis for the belief that the action is necessary to protect the child, to the Division of Child and Family Services or to law enforcement.

A person convicted of custodial interference is subject to drivers license suspension; 30 days for a class B, 90 days for a class A and 180 days for a felony. The sentencing court may, by specific order, shorten these suspension periods.

## **MUNICIPAL CLERK AND RECORDER RESPONSIBILITIES**

**HB 199**

**Rep. Bradley Last**

This bill:

- authorizes the legislative body of a town to establish a director of finance position;
- eliminates the previous requirement that cities operating under an optional form of government establish a director of finance position; and
- clarifies the appointment and removal of a director of finance.

## **IMPACT FEE AMENDMENTS**

**HB 205**

**Rep. Stephen Sandstrom**

This bill clarifies that school districts and charter schools may be eligible for impact fee credits in a similar manner as are developers. It further establishes that impact fees cannot be imposed on a district or charter school for a replacement school, whether on the same parcel, or where

no greater demand is created by the new school when compared to the existing school, including any portable or modular classrooms.

## **BAN ON SALE OF SMOKING PARAPHERNALIA TO MINORS**

**HB 206**

**Rep. Paul Ray**

HB 206 creates a new statute, 76-10-104.1, that makes it a misdemeanor offense to provide tobacco paraphernalia to anyone who is under the age of 19. Tobacco paraphernalia is defined as any equipment, product, or material used or intended to be used to introduce tobacco into the body. Paraphernalia also includes items that are used to package, store, contain, or conceal cigars, cigarettes, and tobacco in any form. Matches and lighters do not qualify as paraphernalia. This statute does not apply to the United States Postal Service or other carriers who have no reason to know of the package's contents. A first time violation of the statute is punishable as a class C misdemeanor, and subsequent violations are punishable as class B misdemeanors.

## **PROTECTION OF PROPERTY AMENDMENT**

**HB 207**

**Rep. Carl Wimmer**

This bill adds factors to be considered in determining the reasonableness of the use of force in defense of property. Those factors are:

- (a) the apparent or perceived extent of the damage of the property;
- (b) property damage previously caused by the other person;
- (c) threats of injury or damage to property that have been made previously by the other person; and
- (d) any patterns of abuse of violence between the person and the other person.

## **SEX OFFENDER REGULATION AMENDMENTS**

**HB 209**

**Rep. Christine Watkins**

Provides that a sex offender who is required to register with the Department of Corrections shall, in addition to the \$100 annual fee that is to be paid to Corrections, shall pay an annual \$25 fee to the registering agency if the registering agency is other than Corrections. The \$25 fee may be assessed against the reporting offender by the registering agency.

## **IMPROVEMENT DISTRICT BOARD MEMBERSHIP**

**HB 211**

**Rep. Kraig Powell**

HB 211 amends the membership requirements for an improvement district board of trustees, by allowing a trustee appointed or elected to represent the “remaining area” (the area outside the boundaries of an included municipality, or an included municipality that has not appointed a trustee) of an improvement district to be chosen from the district at large.

## **CONCEALED FIREARM PERMIT MODIFICATIONS**

**HB 214**

**Rep. Rebecca Lockhart**

This bill changes the names of the Concealed Weapon Act and the Concealed Weapon Review Board to the Concealed Firearm Act and the Concealed Firearm Review Board. The bill also assigns the duties related to the issuance of a concealed firearm permit to BCI (which is already the practical reality). A provision also clarifies the ability of BCI to revoke a concealed carry permit of a licensee who is convicted of a felony or other crimes or offenses.

## **INCORPORATION OF A TOWN AMENDMENTS**

**HB 216**

**Rep. Gage Froerer**

To address the brouhaha caused in Weber County, this bill makes a simple change to the notice requirements, now addressing the state website for notice, and further, it increases the revenue cost differential from ten percent (10%) to fifteen percent (15%). In other words, the result of the required feasibility study must establish that revenues will exceed costs by fifteen percent (15%) before the incorporation is considered feasible.

## **DELINQUENT PROPERTY TAX AMENDMENTS**

**HB 219**

**Rep. Gage Froerer**

This bill increases the penalty imposed on delinquent property taxes from 2% to 2.5%; provides that the penalty is only 1% if the delinquent property taxes and the penalty are paid by January 31; provides that the interest rate that attaches to delinquent taxes and the penalty be no less than 7% and no more than 10%.

## LAND USE MEETING NOTICE

**HB 222**

**Rep. Trisha Beck**

This bill merely changes the notice mailing requirement of public hearings on adoption or modification of land use ordinances to affected and adjacent property owners from a 3 day prior to a 10 day period.

## COUNTERFEIT SUBSTANCE AMENDMENTS

**HB 225**

**Rep. Paul Ray**

In order to preserve legislative intent for future interpretation of the statute Representative Ray read the following statement into the record on the floor. It is included in its entirety for your reference in future cases.

### DRUG LAW CLARIFICATION

HB 225

Statement of Rep. Paul Ray

“This bill clarifies the definitions of “counterfeit substance” and “imitation controlled substance” in the drug laws. A recent ruling by the Utah Supreme Court (*State v. Jeffries* Filed 2009 UT 57 Sept. 1, 2009) pointed out a need to clarify some changes to those definitions which this legislature made 23 years ago. In 1987 (S.B. 112 Carling), we found that the drug laws needed to be changed to deal with some real problems.”

“This bill simply re-instates the law as it has been understood since 1987 but makes it much clearer. It provides two ways that a substance can be defined as a ‘counterfeit substance’.”

“The first kind of “counterfeit” is one which is intended to make the buyer think that a controlled substance made by some illicit manufacturer is a specific legitimately manufactured controlled substance. That subsection is found on lines 108 through 117 of the bill [58-37-2(i)(i)]. That kind of “counterfeit” may actually be a close copy of the genuine product or it may be an ineffective or even dangerous approximation of the real thing. Obviously undermining the integrity of important brand name drugs is a serious offense.”

“The second kind of counterfeit is defined on lines 118 through 121 of the bill [58-37-2(i)(ii)]. This could be any other kind of substance falsely represented to be either a legally manufactured controlled substance or an illegal street drug. The representation must be realistic enough that a reasonable person would believe that it really is a controlled substance. A typical example would be a person selling a piece of Sheetrock in a paper “twist” and representing it to be rock cocaine. Counterfeits of illegally produced controlled substances are as harmful to society as the real illegal controlled substances. In some cases the counterfeit substance may have harmful or fatal effects on the user. The distribution of such a counterfeit often provokes violent retaliation from an angry

purchaser in what is already a dangerous illegal drug trade. This is dangerous to a lot of innocent people as well as the parties involved in the distribution.”

“An ‘imitation controlled substance’ is a substance resembling a particular legal or illegal controlled substance but which is not actually represented to be a controlled substance. An example if the original intent of this law was a package of fake “cross top” pills which were being sold in the ‘80s to simulate amphetamines. That ban was very effective and we have had very few prosecutions for selling ‘imitation controlled substances’ since then.”

“Although a reasonable person might not believe it to be a controlled substance, an ‘imitation’ still has harmful effects. An imitation which is easily available and consumed in simulation of drug use - especially by impressionable young people - promotes disrespect for the dangers of drug abuse and may be used to introduce people into the illegal drug culture. An imitation controlled substance may be easily converted to a counterfeit substance by representations that it is a controlled substance or by means such as deceptive labeling or packaging.”

“Section 58-37b-3 is an unnecessary section which has caused confusion in interpretation of the imitation controlled substance sections. It is repealed in this bill. The relevant evidence mentioned in this section is adequately governed by the Utah Rules Of Evidence.”

“The ‘effective on approval’ section is to minimize reported delays in processing drug cases. This bill is supported by the Law Enforcement Legislative Committee, The Commission on Criminal and Juvenile Justice, The Utah Sentencing Commission, The Utah Council on Victims of Crime, The Utah Board of Juvenile Justice and the Statewide Association of Prosecutors.”

## **WATER RIGHT GENERAL ADJUDICATION AMENDMENTS**

**HB 229** **Rep. Patrick Painter**

This bill eliminates the need to have an objection to the state engineer's determination be verified under oath. It further adopts an expedited hearing process. An individual with a direct interest may petition the court for an expedited hearing. The court may grant a hearing if it finds it is necessary in the interest of justice, would facilitate a reasonable prompt resolution, and would not prejudice the rights of another. Finally, the amendment allows that, during a general adjudication suit, a claimant may petition the court to have the state engineer make a proposed determination for a limited area within the general adjudication area. That also may be granted upon the court finding that the claimants will otherwise suffer prejudice, the claims are properly within the current action, the state engineer's resources would not be unduly burdened, and granting the petition would not otherwise interfere with the state engineer's discretion of allocating these resources.

## HUMAN TRAFFICKING AMENDMENTS

**HB 230**

**Rep. Julie Fisher**

In 2008 the legislature passed a Human Trafficking statute, 76-5-309. This bill amends that statute to provide that it is a separate offense for each person who is trafficked or smuggled in violation of the statute.

## WATER RIGHTS PRIORITIES IN TIMES OF SHORTAGE

**HB 231**

**Rep. Kerry Gibson**

A new section, 73-3-21.1 was created by this enactment. This section defines a "temporary water shortage emergency" as any drought, for which the governor has declared an emergency, and doesn't appear that it will last more than two (2) consecutive years. The basic priority is that based on the date of the parties' respective appropriations. It allows an exception to this prioritization during an emergency. The priority then becomes water for drinking, sanitation, and fire suppression, depending upon the user, and then agricultural uses. Any person's water that was used by another during these temporary water shortage emergencies would be compensated by the user thereof, along with consequential damages, such as loss of crops.

## STATUTORY CONSTRUCTION AMENDMENTS

**HB 236**

**Rep. Rebecca Lockhart**

The additions to Section 68-3-12 which are contained in this bill are rather useful in interpreting and drafting statutes. It is a practical creation of Legislative General Counsel. Some of the more useful additions are included. [The line numbers are from the enrolled copy of the bill.]

- 704 (f) "Include," "includes," or "including" means that the items listed are not an  
705 exclusive list, unless the word "only" or similar language is used to expressly indicate that the  
706 list is an exclusive list.  
707 (g) "May" means that an action is authorized or permissive.  
708 (h) "May not" means that an action is not authorized and is prohibited.  
709 (i) "Must" means, depending on the context in which it is used, that:  
710 (i) an action is required or mandatory;  
711 (ii) an action or result is compelled by necessity;  
712 (iii) an item is indispensable; or  
713 (iv) an action or event is a condition precedent to:  
714 (A) the authority to act;  
715 (B) a prohibition;  
716 (C) the accrual or loss of a right; or  
717 (D) the imposition or removal of an obligation.

718 (j) "Shall" means that an action is required or mandatory.  
 719 (2) (a) Except as provided in Subsection (2)(b) or (c), the use of the following terms in  
 720 the Utah Code is strongly discouraged:  
 721 (i) "shall not";  
 722 (ii) "should not";  
 723 (iii) "must not"; or  
 724 (iv) "but not limited to" after "include," "includes," or "including."  
 725 (b) A term described in Subsection (2)(a) may be used when unusual circumstances  
 726 exist that require the use of the term, including the use of the term:  
 727 (i) in an interstate compact; or  
 728 (ii) to ensure consistency with a federal law or rule.  
 729 (c) (i) Except as provided in Subsection (2)(c)(ii), the use of the word "should" is  
 730 strongly discouraged.  
 731 (ii) The word "should" may be used to:  
 732 (A) refer to a recommended action, including a provision that a person shall or may  
 733 recommend whether an action "should" be taken;  
 734 (B) indicate an expected standard of knowledge, including a provision that a person  
 735 "should" know:  
 736 (I) whether a fact exists; or  
 737 (II) that an action is likely to cause a specified result; or  
 738 (C) refer to a determination as to whether an action "should" have occurred.  
 739 (d) The use of the word "must" is strongly discouraged when the term "shall" can be  
 740 used in its place.

## **CRIMINAL PENALTIES AMENDMENTS - LEAVING THE SCENE OF AN ACCIDENT**

**HB 250**

**Rep. Christopher Herrod**

This bill makes some seriously needed changes to Utah's hit and run statutes – 41-6a-401.3 and 41-6a-401.5.

Leaving the scene of an accident that results in either serious bodily injury or death to any person will now be a 3<sup>rd</sup> degree felony with a minimum fine of \$750. The previous language requiring prior convictions in order to enhance to a felony is gone.

Leaving the scene of an accident in which there is injury, but not “serious bodily injury,” remains a class A misdemeanor.

## **VOTER IDENTIFICATION AMENDMENTS**

**HB 254**

**Rep. Bradley Daw**

With this bill, U.S. Military identification cards and tribal identification cards are valid identification by themselves in order to register to vote. Previously they could be used, but required, in addition, one other form of identification.

## **VOTING PRECINCT BOUNDARIES**

**HB 258**

**Rep. Kenneth Sumsion**

This bill prohibits counties from changing voting precinct boundaries between January 1st of the year preceding the year in which a census occurs (i.e. January 1, 2009...2019) until the State legislature divides the State house districts based upon that census.

## **PROPERTY TAX AMENDMENTS**

**HB 259**

**Rep. Wayne Harper**

This bill makes a number of changes to the Property Tax Act. It moves the authority to fill a vacancy in the office of county assessor from the county executive to the county legislative body. It expands a requirement to conduct an annual update of property values using a mass appraisal system so that the requirement applies to assessors in counties of the third, fourth, fifth, and sixth class in addition to county assessors in first and second class counties. It modifies provisions relating to the multi county assessing and collecting levy, which helps to pay for these mass appraisal systems. It modifies the time within which a taxpayer may file an appeal relating to the value of personal property. It modifies the contents of the valuation notice sent out to real property owners.

## **FINANCIAL RESPONSIBILITY OF MOTOR VEHICLE OWNERS AND OPERATORS ACT AMENDMENTS**

**HB 261**

**Rep. Richard Greenwood**

Repeals the provision that prohibited a person from using the renewal notice or renewal notice card they receive from their auto insurance company as evidence that the person had liability insurance in effect for the vehicle at the time of a citation or arrest for operating a motor vehicle without having evidence of insurance for the vehicle in the person's immediate possession.

Provides that a peace officer may not cite or arrest a person for failure to have evidence of insurance for the vehicle in the person's immediate possession if the Uninsured Motorist Identification



Database Program indicates that the vehicle or driver is insured.

Increases from two to three months the time that a motor vehicle must show as uninsured in the Uninsured Motorist Identification Database before the insurance agent of record must give notice to the owner of the vehicle that the owner has 15 days to provide proof of insurance or that the owner is exempt from insurance requirements.

## **REAL PROPERTY AMENDMENTS**

### **HB 265**

**Rep. Gage Froerer**

While your county assessor is golfing or hunting, excuse me, I mean evaluating and assessing the property value of golf courses or hunting clubs, the assessor is required to take into account other factors that may affect the fair market value of the property. Those factors include the value that transfers to the neighbor property because of this use, the legal restrictions on the development potential of the property, the history of the operation, and the likelihood of its continued use into the future.

## **SOLEMNIZING MARRIAGES AMENDMENT**

### **HB 269**

**Rep. Douglas Aagard**

This bill repeals a requirement that only full-time employees of the office responsible for he issuance of marriage licenses may be deputized to solemnize marriages, thereby allowing all employees of the office responsible for the issuance of marriage licenses to be deputized to solemnize marriages.

## **SEX OFFENDER REGISTRY AMENDMENTS**

### **HB 276**

**Rep. Paul Ray**

This bill expands the definition of “jurisdiction” within the Utah Sex and Kidnap Offender Registry to include “any property under the jurisdiction of the United States Military.

The bill also clarifies that the terms “Kidnap Offender” and “Sex Offender” include anyone who has been convicted of a crime that is “substantially equivalent” to our state statutes in any other state court or in any federal or military court, or who is required to register as a sex offender by any such court.

## **OVERDOSE REPORTING AMENDMENTS**

**HB 277**

**Rep. Christine Johnson**

The intent of this bill is to encourage minors who have been involved in the consumption of alcohol to obtain help for persons who appear to be in danger of alcohol poisoning. HB 277 implements a new statute, 32A-13-110, which creates a mitigating sentencing factor for defendants who have been convicted of the unlawful sale or furnishing of alcohol to a minor (32A-12-203), or the unlawful purchase, possession, or consumption of alcohol by a minor (32A-12-209), if the defendant contacted law enforcement to obtain emergency assistance for someone whom the defendant reasonably believed required medical care due to excessive alcohol consumption. The statute applies to persons under the age of 21 who were not involved in coercing or encouraging the endangered person to drink alcohol.

## **GOVERNMENT RECORDS ACCESS AND MANAGEMENT AMENDMENTS**

**HB 278**

**Rep. Christopher Herrod**

Governmental entities must now provide access to records electronically, if requested, provided: the entity maintains the record in an electronic format that is reproducible and may be provided without reformatting or conversion; and the electronic copy does not disclose exempt records or may be segregated to protect private, protected or controlled information from disclosure without undue expenditure of public resources or funds.

It also provides a five business day deadline for an entity to inform a requester that his request for an expedited response does not qualify for such response.

## **COUNTY RECORDER AMENDMENTS**

**HB 279**

**Rep. Curt Webb**

Often County Recorders are faced with recording questions for which the statutes are silent or ambiguous. This bill addresses some of those open questions.

- Prior law said “the owner” of land must sign a subdivision plat. Now it says “each owner of record of land”.
- Common area in a subdivision can only be conveyed to a municipality for governmental purposes or if approved by owners of 75% of the lots in the subdivision. The document showing owner approval must also be recorded.
- Many sections talked about vacate, alter, or amend. Alter has been eliminated as redundant.
- Made it clear that a legislative body may vacate or amend all or a portion of a subdivision plat. Must be signed by each owner of record of the portions to be vacated or amended.

- A governmental entity may vacate some or all of a street, right-of-way or easement by recording a plat reflecting the vacation or by recording an ordinance.
- Recorders have discretion in accepting or rejecting documents which may be “wrongful liens”. A recorder who, in good faith, accepts or rejects recording of a lien as a wrongful lien, is not liable for damages.
- A Trustee’s Deed that is recorded and effectively transfers title cannot be rescinded or cancelled.

Recorders are required to keep a tract index and to abstract documents in the index. They often have difficulty determining whether a specific document is effective in transferring title enough to be included in the abstract. This bill gives some flexibility in declining to abstract instruments which have deficiencies (Section 17-21-6(3), UCA). The bill provides immunity from suits brought as a result of information in a recorded document. The fact that an instrument is included in the abstract does not cure any deficiencies in the document.

## **LOCAL GOVERNMENT AMENDMENTS**

**HB 282**

**Rep. Stephen Sandstrom**

Provides that neither a city nor a county may, for a land use or a structure owned or operated by a school district or charter school that is not an educational facility but is used in support of providing instruction to pupils, impose a regulation that:

- (1) is not imposed on a similar land use or structure in the zone in which the land use or structure is approved; or
- (2) uses the tax exempt status of the school district or charter school as criteria for prohibiting or regulating the land use or location of the structure.

## **VICTIMS’ RIGHTS AMENDMENTS**

**HB 293**

**Rep. R. Curt Webb**

HB 293 adds sections to the enforcement of victims’ rights statute (77-38-11) that allow victims to appeal adverse rulings by the trial court on such issues as a request for declaratory relief or a motion for an appropriate remedy for a violation of a victim’s rights. An appeal by a victim may not constitute grounds for delaying any criminal or juvenile proceeding.

## **LAND USE AUTHORITY NOTIFICATION OF CANAL DEVELOPMENT**

**HB 298**

**Rep. Ben Ferry**

Canal companies will be required, by July 1st 2010, to provide counties and cities with a contact name, telephone number, and current mailing address along with a general description of the location of each of their canals within the boundaries of the respective jurisdiction. On the other hand, if a city or county receives an application for subdivision approval on property that is located within one hundred feet (100') of the center line of the canal, the city or county must notify the canal company within thirty (30) days of receiving that application. The city or county must then wait at least ten (10) days after providing that notice to act on the subdivision application.

## **MINOR AMENDMENTS TO COUNTY BOUNDARIES**

**HB 302**

**Rep. Patrick Painter**

HB 302 removes the former limit of 1,000 feet for the adjustment of county boundaries for counties sharing a common boundary. This bill now allows an adjustment, for purposes of real property tax assessment and county record keeping, to a sufficient distance to reach to and correspond with the closest existing property boundary of record, as long as the adjustment does not divide or split an existing parcel, an interest in the property, or a claim of record.

## **PROTECTIONS FOR VICTIMS OF DOMESTIC VIOLENCE**

**HB 303**

**Rep. Eric K. Hutchings**

This bill modifies the Cohabitant Abuse Procedures Act, Utah Code Ann. § 77-36-1 et seq., to do the following:

1. "Jail release agreement," which an arrestee for domestic violence signs as a condition of release from jail, and which prohibits or limits contact with the alleged victim and specified individuals, is now defined.
2. "Jail release court order," which an arrestee for domestic violence is ordered by a judge to comply as a condition of release from jail, and which prohibits or limits contact with the alleged victim and specified individuals, is now defined.
3. "Pretrial protective order," specifying and limiting the contact a person charged with domestic violence may have with an alleged victim or other specified individuals, is now defined.
4. "Sentencing protective order," which limits the contact a person convicted of domestic violence may have with a victim or other specified individuals, is now defined.
5. Clarifies that violation of any of the protective orders above, or of a civil ex parte protective order, is a class A misdemeanor, except: where the original arrest was for a DV felony, a violation of a jail release agreement or jail release order is a third degree felony; and if the

defendant is charged with a DV felony, then a violation of the pretrial protective order is a third degree felony.

6. Provides that the jail release agreement or jail court order expires at midnight on the day on which the person arrested appears in person or by video for arraignment or an initial appearance.
7. Provides that if criminal charges have not been filed against the arrested person, the court may, for good cause and in writing, extend the jail release agreement or jail release court order beyond that described in (6) above, but not beyond the third business day after the arrested person's first court appearance.
8. Provides that if criminal charges are filed against the arrested person within three business days, the jail release agreement or the jail release court order continues in effect until the arrested person appears in court in person or by video at the arrested person's next scheduled court appearance.
9. Provides that if criminal charges have been filed against the arrested person the court may, upon request of the prosecutor or the victim or upon the court's own motion, issue a pretrial protective order.
10. Clarifies that if a court modifies a jail release agreement or jail release court order, the court shall transmit that modified order to the statewide domestic violence network described in Utah Code Ann. § 78B-7-113.
11. Provides that a copy of the jail release agreement or jail release court order shall be provided to the arrested person prior to their release from jail.
12. Provides that the written notice an officer provides to a domestic violence arrestee shall contain an additional notice, which is that the arrestee is to personally appear in court on the next day the court is open for business after the arrest, and provides that if the domestic violence arrestee fails to appear in court as scheduled, the jail release court order or jail release agreement does not expire until the domestic violence arrestee appears in court.
13. Provides that when the domestic violence arrestee appears in court and charges have not been filed, the court may allow the court order to expire at midnight of the day of court appearance or may extend it for good cause.
14. Clarifies that appearance by video is allowed.
15. Provides that all orders made by the court, and dismissals thereof, shall be transmitted to the statewide domestic violence network.

## **TERRORISM AMENDMENTS**

**HB 306**

**Rep. Eric Hutchings**

The sponsor was concerned that the term "terrorism" has a highly charged meaning in the post 9-11 world and that the somewhat excessive use of the word in the Utah Code makes Utah look like the "terrorism capital of the world". The bill changes words such as "cyber-terrorism" to those such as "malicious cyber activity".

“Terrorism” is defined in the homeland security provisions of 53-2-102. It is clearly aimed at what we now think of as real “terrorism” - foreign or domestic.

The often used Section 76-5-107 which has previously been called “terroristic threats” was changed to “threat of violence”. That section is now limited to the class B misdemeanor as the felony provisions have been moved to a new Section 76-5-107.3 “threat of terrorism”. Several other sections have had the name “terrorism” replaced. Aside from the extra work this creates for the case management system it is probably a good idea.

## **GENERAL COUNTY POWERS AMENDMENTS**

**HB 307**

**Rep. Gregory Hughes**

This bill prohibits a county or a governmental instrumentality of a county from performing an action, providing a service, exercising a power, or performing a function in another county or a municipality within the other county without first entering into an agreement with the other county.

## **STATE FIRE CODE ADOPTION**

**HB 308**

**Rep. Todd Kiser**

This is the adoption of the International Fire Code for the state along with numerous provisions from the National Fire Protection Association. This enactment includes many customized amendments by the state. It includes a provision for the "grandfathering" of local ordinances regulating automatic sprinkler systems, as long as those ordinances are in effect on or before June 30, 2010.

## **MEDICAL EXPENSES FOR OFFENDERS**

**HB 312**

**Rep. Paul Ray**

This bill only applies to offenders in the custody of the Department of Corrections. It provides caps on medical services paid from providers outside the prison facility and further provides that such expenses shall be paid only if they exceed the offender’s private insurance in effect at the time.

## **ADDENDUMS TO DEEDS**

**HB 314**

**Rep. Ben Ferry**

This bill provides that water rights may be transferred in conjunction with title to a property or separate therefrom. If the water rights are conveyed in a separate deed or if they are included in an addendum to a deed for real property, the grantee must acknowledge the receipt of said water rights. These are to be done on deeds created by the state engineer's office.

## **UTAH PUBLIC NOTICE WEBSITE AMENDMENTS**

**HB 315**

**Rep. Kraig Powell**

This bill modifies statutory requirements to publish or post notice to the Utah Public Notice Website to provide a temporary exemption for specified public bodies with an annual budget of less than \$1,000,000. The exemption ends December 31, 2012.

## **DISABLED VETERANS PROPERTY TAX EXEMPTION AMENDMENTS**

**HB 316**

**Rep. Gregory Hughes**

This bill creates a presumption that a disabled veteran is a United States citizen. Other statutes have required county treasurers to verify citizenship before granting tax relief, and this bill was intended to remove the need for disabled veterans to provide this verification. The bill also addresses the issue that has arisen with county treasurers when the United States Veteran's Administration has indicated that a veteran is not 100% disabled but is unemployable. In that situation, the veteran receives a 100% exemption.

## **REVOLVING LOAN FUND FOR CERTAIN ENERGY EFFICIENT PROJECTS**

**HB 318**

**Rep. Roger Barrus**

This bill expands the Energy Efficiency Revolving Loan Fund to include political subdivisions. The bill allows the Energy Efficiency Fund to be used for projects in buildings owned by political subdivisions, including school districts.

## **BOND ELECTION NOTIFICATIONS REVISIONS**

**HB 321**

**Rep. Gregory Hughes**

This bill requires a voter information pamphlet to be prepared for certain bond elections and mailed to all households containing a registered voter who is eligible to vote on the bonds. It also requires additional information to be provided in a voter information pamphlet prepared for a bond election and changes ballot notification requirements by requiring additional information to be provided on the ballot. The bill also deletes a provision requiring the type of bond to be identified on the ballot and deletes a provision requiring notification of payment sources if the bond is payable from tax proceeds and operating revenues.

## **CAMPAIGN FINANCE AMENDMENTS**

**HB 329**

**Rep. Ben Ferry**

The bill amends provisions of Title 20A, Chapter 11, Campaign and Financial Reporting Requirements and Title 20A, Selection and Election of Judges. You will want to review the changes on definitions especially the new definition of “electioneering communication”. The bill requires a filing entity to electronically file a financial statement. The lieutenant governor is required to post the financial statement online in a searchable format within three business days. The bill also requires checks that have been negotiated to be reported in an interim or summary report and requires a person sponsoring certain electioneering communications to file a report. Reporting requirements for corporations having certain contracts with the state are also included. A fine is imposed for failure to file a timely financial statement.

**Effective date: January 1, 2011.**

## **UNIFORM DRIVERS LICENSE ACT AMENDMENTS**

**HB 337**

**Rep. Rebecca Lockhart**

This bill provides that DLD must no longer impose a six month suspension of the drivers license of a person who has been convicted of a controlled substance offense under Title 53, Chapter 37, 37a, 37b, 37c or 37d and other drug related criminal offenses if:

- the violation did not involve a motor vehicle; and
  - the convicted person is participating in or has successfully completed substance abuse treatment through a program that is approved by the Division of Substance Abuse and Mental Health; or
  - is participating in or has successfully completed probation through the AP&P.

If the person fails to successfully complete the drug treatment program or fails to successfully complete probation, the treatment program or AP&P, as the case may be, are to notify the court,



which is to notify DLD, which shall immediately suspend the person's drivers license for the required period.

This bill would seem to provide one more tool and incentive that can be used by courts and prosecutors in non-motor vehicle drug cases.

## **GREAT SALT LAKE ADVISORY COUNCIL**

**HB 343**

**Rep. Ben Ferry**

This bill enacts the Great Salt Lake Advisory Council Act in Utah Code Ann., Title 73 Chapter 39. The bill creates the Great Salt Lake Advisory Council; outlines the duties of the council and requires designated state departments to provide staffing. Five members of the new council are to be elected officials from each of the five counties which surround the lake. There will also be one member appointed from a municipal government.

## **SHERIFFS FEES**

**HB 348**

**Rep. Richard Greenwood**

The County may now set by ordinance the fees of the sheriff in performing various duties so long as such fees are an amount reasonably related to, but not exceeding, the actual cost of providing the service. It maintains a fee structure in the event the county legislative body does not pass such an ordinance and increases the fee to serve notices, summons, etc., from \$15 to \$20 and the one way mileage computation from \$1.50 per mile to \$2.50 per mile for up to 100 miles.

## **SALES AND USE TAX AMENDMENTS**

**HB 349**

**Rep. Wayne Harper**

This bill primarily addresses the collection, remittance, and payment of sales and use tax on advertising and promotional direct mail. It defines "advertising and promotional direct mail" and allows a purchaser of such mail to provide certain information or forms relating to the transaction. If such information is provided, the seller is relieved of the responsibility to collect and remit the sales tax for the transaction. If the information is not provided, the seller must determine the amount of tax due on the transaction and remit it to the Utah State Tax Commission. The bill also clarifies what location to report for transactions subject to use tax. In addition, at the request of the Utah State Tax Commission, the bill updates certain archaic references that had become outdated. Finally, the bill also requires that the administrative fee the Utah State Tax Commission charges for administering the municipal energy sales and use tax only be used for that purpose.

## **MUNICIPAL ELECTION AMENDMENTS**

**HB 363**

**Rep. Craig Frank**

This bill allows rather than requires a municipality of the fifth class or a town to provide early voting for a municipal primary election or a municipal general election.

## **RIGHT OF IDENTITY THEFT VICTIM TO CIVIL CAUSE OF ACTION**

**HB 364**

**Rep. Julie Fisher**

Although this bill contains no criminal provisions, prosecutors, law enforcement and victim coordinators should be aware of it so they can effectively advise victims of identity theft of the options available to them. The bill, in 78B-2.305, creates a civil cause of action for a victim of identity fraud – 76-6-1102, or of communication fraud – 76-10-1801, against the perpetrator. The cause of action includes:

- compensatory damages in the amount of \$1,000 or up to three times the amount of actual damages, whichever is greater;
- attorney fees; and
- court costs.

Actual damages may include:

- replacement or reissuance costs for checks and any personal identification documents;
- the value of the petitioner's time spent:
  - repairing their credit history or rating; and
  - attending civil or administrative hearings necessary to resolve any debt, lien, or other obligation arising from the offense;
- lost wages; and
- any other verifiable costs the court may choose to include.

The court may award punitive damages in addition to compensatory damages.

A perpetrator who is found guilty of a violation of either 76-6-1102 or of 76-10-1801, is liable under this cause of action. A perpetrator who is not tried or who is found not guilty of either of those sections, may nonetheless be found liable under this cause of action if the court finds by a preponderance of the evidence that the perpetrator participated in a violation and that the petitioner was injured as a result.

## **DEPARTMENT OF CORRECTIONS REGISTRY AMENDMENTS**

**HB 365**

**Rep. Doug Aagard**

Minor changes are made to the Registry by defining what a secondary residence is and

allowing the Utah Department of Corrections to assist in investigating Kidnaping offences. "Secondary residence" means any real property that the offender owns or has a financial interest in or any location where, in any 12 month period the offender stays overnight a total of 10 or more nights when not staying at the offender's primary residence.

## **FIREARM LAW AMENDMENTS**

### **HB 380**

**Rep. Steve Sandstrom**

A defense against civil and criminal liability is available to a private property owner when a concealed firearm permit holder discharges a firearm while on the owner's property. The defense does not apply if the property owner solicits, requests, commands, encourages, or intentionally aids the permit holder in discharging the firearm. The intent of the bill is to encourage property owners and generally businesses, to allow concealed firearms carried by permit holders to enter onto their property by protecting them from liability for the permit holder's actions. This bill applies whether the caliber of the firearm is .380 or .45 or any other number.

## **MUNICIPAL LAND USE PROVISIONS**

### **HB 381**

**Rep. Stephen Sandstrom**

This bill prohibits cities from using the business license application process to require physical changes to structures that are legal nonconforming rental housing uses, nor may cities terminate legal nonconforming rental housing uses through that process.

## **MOBILE HOME REVISIONS**

### **HB 388**

**Rep. James Dunnigan**

This bill allows multiple resident associations in a mobile home park, but only requires the park to recognize the association with the most resident members. A park operator and resident association may not harass or threaten each other. Except for reasonable time, place and manner restrictions, a park operator may not prohibit a resident or resident association from noncommercial free expression, assembly, canvassing, etc. A park operator may not retaliate against a resident that complains to government or participates in litigation relating to the park. The bill provides guidelines regarding a resident association's use of a park's common facilities.

## **SEXUALLY ORIENTED BUSINESS LICENSE AMENDMENTS**

**HB 398**

**Rep. Jay Seegmiller**

This bill simply provides that

- a person who is employed in a sexually oriented business may not work in a municipality or in the unincorporated area of a county if the municipality or the county, as the case may be, requires that a person employed in a sexually oriented business be individually licensed and the person does not have the requisite license; and
- a business entity that conducts a sexually oriented business may not conduct business in a municipality or in the unincorporated area of a county, as the case may be, if the municipality or the county requires that a sexually oriented business be licensed and the business entity does not have the requisite license.

The bill also amends the definition of “Escort” in both 10-8-41.5 and 17-50-331. Those are the Regulation of Sexually Oriented Businesses sections in the municipal code and the county code.

## **CIVIL ACTION FOR DAMAGES RELATED TO ADDICTION FROM ILLEGAL DRUG SALES**

**HB 409**

**Rep. C. Herrod**

This bill amends and expands the ability to sue drug dealers or other persons that illegally distribute a controlled substance. Importantly, it adds “addicted person” – not just the estate of a deceased person, as a person that may sue for damages caused by the effects of the illegally provided substance.

The bill specifies that lawsuit may seek damages for costs of rehabilitation or drug treatment, for treble damages, or even for punitive damages.

## **BAIL BOND LICENSEE REPRESENTATION AMENDMENTS**

**HB 426**

**Rep. Steve Sandstrom**

Hey, Dog! Dog the Bounty Hunter, that is. Now you and all other bounty hunters and bond enforcement agents may wear a badge identifying you as such. However, the badge must be approved by the Bail Bond Recovery Licensure Board *and* the wearer must also be wearing an item of clothing that clearly identifies him or her as a Bail Bond Recover Agent. I see a TV show in the works: The Badged Bounty Boys from Utah.

## **CRIMINAL HOMICIDE AND ABORTION REVISIONS**

**HB 462**

**Rep. Carl Wimmer**

This bill makes several changes to both the abortion and criminal homicide statutes. It narrows the definition of abortion to only include medical procedures carried out by a physician, or through a substance used under the direction of a physician, with the consent of the woman on whom the abortion is performed. In addition to amending the definition, it does away with the defense that has historically barred the prosecution of a woman seeking an abortion. Although, a woman may be prosecuted for the killing of an unborn child through an illegal abortion or other method as a result of this law, it does not prevent a woman from seeking a legal abortion.

Under the new law, a woman may be charged with the killing of an unborn child, however, the statute limits the applicable mental states to intentional or knowing acts that result in the death of an unborn child. A woman may not be charged if the death of the unborn child is caused by her own criminally negligent or reckless act. Additionally, the statute specifies that a woman is not guilty of criminal homicide if the unborn child's death is the result of the woman's refusal to consent to medical treatment, a cesarean section, or failure to follow medical advice. An unborn child is not considered to be a child under the age of 14 for purposes of the aggravated murder statute.

**Effective Date: March 8, 2010 – upon being signed by the Governor.**

## **STRANGULATION AND DOMESTIC VIOLENCE JOINT RESOLUTION**

**HJR 6**

**Rep. Jennifer Seelig**

According to the Utah Domestic Violence Counsel there is a need for a more uniform application of the aggravated assault statute 76-5-102 where the perpetrator applies pressure to the neck or throat of the victim. Prosecution offices with whom we have spoken state that they routinely file aggravated assault charges where the evidence shows an actual effort by the perpetrator to apply pressure to the throat. Nonetheless this a strong statement by the legislature that "application of force to the neck or throat in the course of an assault creates a substantial likelihood of impeding the victim's normal breathing or circulation" and that such action creates a "means or force likely to produce death or serious bodily injury".

As this resolution is intended specifically to encourage police and prosecutors to pursue felony charges where the facts justify, the resolution is included in its entirety:

**Enrolled Copy**

**HJR 6**

1 **STRANGULATION AND DOMESTIC VIOLENCE**

2 **JOINT RESOLUTION**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jennifer M. Seelig**

Senate Sponsor: Jon J. Greiner

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**LONG TITLE**

**General Description:**

This joint resolution of the Legislature urges state and local law enforcement officers and prosecutors to investigate and prosecute as felonies assaults in which the defendant applied force to the neck or throat of the victim.

**Highlighted Provisions:**

This resolution:

- urges state and local law enforcement officers and prosecutors to investigate and prosecute as felonies all assaults in which the evidence shows that the defendant applied force to the neck or throat of the victim, creating a substantial likelihood of impediment to the victim's normal breathing or circulation.

**Special Clauses:**

None

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*Be it resolved by the Legislature of the state of Utah:*

WHEREAS, perpetrators of an assault frequently apply pressure to the neck or throat of a victim;

WHEREAS, in cases of domestic violence, this method is used to assert a brutal control over the weaker partner;

WHEREAS, the application of force to the neck or throat in the course of an assault creates a substantial likelihood of impeding the victim's normal breathing or circulation;

WHEREAS, it is a "means or force likely to produce death or serious bodily injury" within the meaning of the crime of aggravated assault determined in Section 76-5-102 of the Utah Code; and

WHEREAS, this principle has been recognized by the Utah Supreme Court in State v. Speer 750 P.2d 186 (Utah 1988) and State v. Fisher 680 P. 2d 35 at p.37 (Utah 1984):

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah urges state and local law enforcement officers and prosecutors in Utah to investigate and prosecute as felonies all assaults in which the evidence shows that the defendant applied force to the neck or throat of the victim, creating a substantial likelihood of impediment to the victim's normal breathing or circulation.

BE IT FURTHER RESOLVED that copies of this resolution be sent to the Statewide Association of Prosecutors, the Utah Office of Domestic and Sexual Violence, the Utah Legal Aid Society, the Utah Commission on Criminal and Juvenile Justice, the Utah Sheriff's Association, and the Utah Peace Officers Association.

# SENATE BILLS

## CRIMINAL OFFENSE PENALTIES AMENDMENTS

### SB 10

Sen. Jon Greiner

Given the budget difficulties of this session, S.B. 10 was specifically engineered to reallocate resources by shifting emphasis from property crimes to more problematic violent crime. Also to avoid transitional expenses, **the effective date was delayed until November 1<sup>st</sup>, 2010.** This bill was structured to trade property crime caseload for gang enhancement and aggravated assault caseload and to similarly trade prison space for prison space. The net effect was a revenue neutral bill. As this bill deals with several topics we will take them one topic at a time.

#### Criminal Offense Penalties Amendments

##### Gang Enhancement

The gang enhancement in 76-3-203.1 is significantly expanded in addition to the current “in concert with two or more persons standard” the new language applies the one degree penalty enhancement to any listed crime “for the benefit, at the direction, or in association with any criminal street gang as defined in Section 76-9-802; or to gain recognition, acceptance, membership, or increase the status with a criminal street gang as defined in 76-9-802.” The first part was adapted from the California gang statute but the second part - dealing with gaining recognition etc. - was a new innovation which we believe will be very useful in gang prosecution.

Remember that this applies only to listed crimes committed on or after November 1<sup>st</sup>, 2010. Other sections have been amended to conform to the new standard for instance 76B-6-1101 is amended to include the new language in the definition of street gang for nuisance actions. 78A-6-703 is amended to include the new provisions in the standards for certification hearings.

##### Aggravated Assault

Aggravated assault 76-5-103 is amended to remove the requirement that the defendant intentionally causes serious bodily injury in order to qualify for a second degree felony. The new standard is that if the person commits aggravated assault “that results in serious bodily injury” it is a second degree felony.

##### Property Crimes

The threshold amounts required to establish a theft charge as a class A misdemeanor, 3<sup>rd</sup> degree felony or 2<sup>nd</sup> degree felony were last adjusted in 1995 in a bill run by the Utah Sentencing Commission. In the 15 years since then there has been no adjustment of the amounts to allow for inflation. This allows the penalties to creep upward and cases which were previously handled in justice courts and by municipal prosecutors slowly move into the district courts and the county prosecutors’ offices. By raising these amounts to allow for inflation and then rounding upward to whole numbers we are able to move some of these cases back into more cost efficient jurisdictions. Importantly, this reduces somewhat the fiscal impact on the state courts and correctional institutions.



When we adjusted the penalties back in 1995, we realized we could include in the same bill some important changes and end up with a revenue neutral fiscal note. That is how homicide by assault, aggravated assault as a 2<sup>nd</sup> degree felony and assault causing substantial bodily injury came into law. So this year we decided to try it again. It was not especially easy but it worked.

The classification of theft offenses in 76-6-412 is representative of changes made to all property crimes punished according to value. The threshold amount for a class A misdemeanor is raised from \$300.00 to \$500.00. The threshold amount for a 3<sup>rd</sup> degree felony is raised from \$1,000.00 to \$1,500.00. The threshold for a 2<sup>nd</sup> degree felony remains at \$5,000.00 because that is quite a bit of value and there was a substantial increase the last time this statute was amended.

There is also a trade off within a trade off regarding repeat theft offenders. This was the idea of West Valley Prosecutor Ryan Robinson. As of November 1<sup>st</sup>, any offense under title 76-6 part 5 fraud or any attempt to commit theft, robbery, burglary or *fraud* will count as a prior conviction for the enhancement of theft cases. However, there will be a look-back period which states that each prior offense was committed within 10 years of the date of the current conviction or the date of the offense upon which the current conviction is based. That concept will sound familiar as it is the look-back period for prior convictions in DUI cases. This is a rather reasonable trade off as proving convictions older than 10 years is a bit laborious anyway.

#### Charging Property Offense

The courts raised a genuine concern regarding the transition to the new threshold amounts. The concern is that defendants will constantly be asking to have their sentences reviewed and lowered because the amount in the information to which they pled or under which they were convicted used the old threshold amounts. The point of the delayed effective date is to allow us to resolve that issue ahead of time. Case law generally provides that a defendant is entitled to a lower penalty if the effective date of new legislation is before *sentencing*. There are at least two approaches to resolving this issue. The first and probably the simplest would be to begin using the new threshold amounts in all Informations filed beginning now. In that way few if any offenders will be sentenced after November 1<sup>st</sup>, pursuant to Informations stating the old threshold amounts. Some municipal prosecutors have already stated that their preference for this option. The second option would be to see that in each case the exact amount of the theft is stated in the information at the time of the plea so that there will be no need for a review hearing. That would be a bit more work. And might require a special verdict in a jury case. There are probably other ways to resolve the issue and we have full confidence that each office will come up with the best solution.

**Effective date: November 1, 2010**

## **UTAH STATE-MADE FIREARMS PROTECTION ACT**

**SB 11**

**Sen. Margaret Dayton**

This bill is included as an example of the anti-federal sentiment prevalent in the legislature during the 2010 general session. The bill purports to state that the “court shall consider the following” regarding any matter covered by the chapter. Unfortunately the court considering such a matter would inevitably be a federal court. The gist of the bill is to state that firearms made within the state and sold for use within the state are not subject to federal regulation under the commerce clause. We refer you to the original bill for your reading enjoyment. We do not really recommend making and selling your own firearms without a Federal Firearms License.

## **ELECTION MODIFICATIONS**

**SB 18**

**Sen. Peter Knudson**

This bill amends the deadline for filing certain declarations of candidacy, nomination petitions, and certificate of nomination from 5 p.m. to the close of normal office hours; defines "date of the election" and requires the consent of the Senate for the governor to fill a vacancy in the office of lieutenant governor. The bill also amends the voter registration form to clarify that only a Utah Driver License or Utah Identification Card Number may be used on the form. The bill allows a voter to present valid voter identification to either the county clerk or to an election officer who is administering the election, if the voter presented unsatisfactory voter identification to a poll worker when voting. It amends the provisions for being "legally entitled to vote" by amending the time period from "five business days" to the close of normal office hours on Monday for a voter to present valid voter identification to the county clerk after the election if the voter presented unsatisfactory voter identification to a poll worker when voting and amends the period for the board of municipal canvassers to meet after the election to canvass the returns for a municipal primary election from between three and seven days to between seven and 14 days after the election.

## **LOCAL DISTRICT AMENDMENTS**

**SB 20**

**Sen. Dennis Stowell**

SB 20 expands the powers of a local district by allowing a local district to acquire groundwater rights. The bill also allows for the creation of a local district for the purpose of developing and executing a groundwater management plan in cooperation with the state engineer. SB 20 further allows for the banking of groundwater rights by a local district, and exempts local districts created for the purpose of developing and executing a groundwater management plan from the election requirement for the creation of a local district.

## NOTARY PUBLIC AMENDMENTS

**SB 22**

**Sen. Peter Knudson**

Notaries can celebrate. The onerous test to become a notary public has been replaced by a certification that one has read the information provided by the Lieutenant Governor's office. Notaries are also specifically authorized to fill in the name and date following an individual's signature. Attorneys are authorized to become notary public on an abbreviated application, and, in turn, the Lieutenant Governor is authorized to report any violations of notary regulation by attorneys to the state bar.

## LOCAL OPTION SALES AND USE TAXES FOR TRANSPORTATION

**SB 30**

**Sen. Wayne Niederhauser**

This bill is a recodification of sections of the code relating to the local options sales tax for transportation. These sections were previously scattered throughout the code, and are now grouped into a single part, 59-12-2201 *et seq.* The intent of the recodification was to simplify the code sections relating to this tax. The bill generally requires voter approval in a regular general election or municipal general election (as opposed to just legislative body approval) for all local option sales taxes for transportation. It harmonizes notice requirements for these elections and also harmonizes definitions for all of the relevant sections.

## RAIN WATER HARVESTING

**SB 32**

**Sen. Scott Jenkins**

You will be happy to know that you can collect rain water on your improved lot for a beneficial use on that lot, and you can do so in no more than two (2) containers and neither of them which can contain more than one hundred (100) gallons. You may also have an underground storage tank as long as it is less than twenty-five hundred (2,500) gallons and you register it with the state engineer. (Yes water rights in the West create some interesting dialog.)

## IMPACT FEE REVISIONS

**SB 37**

**Sen. Wayne Niederhauser**

This bill amends several sections of the Utah Code, all are which notice requirements. It requires the posting to be on the Utah Public Notice website that is established in Section 63F-1-701 of the Utah Code. Numerous complicated notice provisions are replaced and the requirements are satisfied by utilizing the designated website.

Secondly, this legislation requires a political subdivision to refund any amount improperly imposed due to an incorrectly calculated impact fee if the entity continued to collect the fees after being told by the ombudsman that they were miscalculated. The amount to be refunded is the difference between what was paid and what should have been paid had the impact fee been calculated correctly. This bill also defines when a fee is "encumbered", for the purpose of the act.

## **FIT PREMISES ACT AMENDMENTS**

**SB 45**

**Sen. Wayne Niederhauser**

This bill prohibits counties and municipalities from placing a specified limit on the number of unrelated individuals allowed to occupy a single-family unit; modifies a renter's duties; authorizes a renter who is a victim of domestic violence to terminate a rental agreement, upon certain conditions; modifies a renter's remedies against an owner for a residential rental unit that does not comply with applicable requirements; and prohibits counties and municipalities from adopting measures inconsistent with the Utah Fit Premises Act, with limitations.

## **VOTER CHALLENGE REVISIONS**

**SB 53**

**Sen. Peter Knudson**

This bill provides the grounds upon which a person's right to vote in an election may be challenged during or before an election and requires that written challenges to a person's right to vote in an election be filed in advance of the election and provides procedures for filing and resolving the challenges before the date of the election. The bill requires the election officer to notify each person whose right to vote in the election has been challenged in writing and permits the person who has been challenged to provide information in response to the challenge. It further requires that written challenges be submitted under oath and be subject to criminal penalties for false statements. The bill provides that an election officer's determination regarding a challenge to a person's right to vote is subject to judicial appeal and requires all documents filed in relation to a written challenge to be public records. The bill also provides requirements for challenging a person's right to vote at the polling place. It is suggested that this bill be studied before the primary and general elections.

## **TRANSPORTATION EXPENSES FOR DEFENDANTS**

**SB 58**

**Rep. Stuart Adams**

This bill mandates that defendants pay restitution for the costs of governmental transportation expenses, unless the court rules otherwise, rather than the current provision requiring the court to order the defendant to pay the restitution for transportation. Reimbursement applies only when the

defendant is transported pursuant to court order from one county to another pursuant to any felony or any misdemeanor offense, and is convicted of a crime. Reimbursement cannot be collected in infraction cases or on FTAs for infractions.

The bill increases the mileage fees for transportation restitution by defendants. The new fee schedule is:

\$100 for up to 100 miles a defendant is transported;  
\$200 for 100 up to 200 miles a defendant is transported; and  
\$350 for 200 miles or more a defendant is transported.

## **AT-RISK STUDENT PROVISIONS**

### **SB 59**

**Sen. Luz Robles**

Although most schools currently have policies dealing with gang activity at school, this bill requires the State Board of Education to adopt rules that require a local school board or the governing board of a charter school to enact certain gang prevention and intervention policies.

The bill recommends that those policies include the following provisions:

- encourage or require school faculty to report gang activity to law enforcement;
- regarding participation in school activities by those involved in gang activity;
- requiring parental notification of graffiti and other damage to schools;
- requiring parental notification to all parents when serious gang related crimes are committed on school property;
- requiring gang prevention training for school faculty by law enforcement.

## **PUBLIC SAFETY SERVICES CROSSING STATE BORDERS**

### **SB 67**

**Sen. Lyle Hillyard**

Marshal Rooster Cogburn hunts down Dirty Ned Pepper. When Marshal Cogburn announces his intention to arrest Pepper, Pepper calls out to him, "That's pretty bold talk for a one-eyed fat man." To which comes the immortal reply, "Fill your hands, you son of a bitch." Now if Marshal Cogburn hit the border of his jurisdiction, Pepper might just shout at him from across the border and we'd never have had the great horseback gunfight that followed. This bill results from problems with bandits committing crimes in Rich County and slipping across the Utah-Idaho border into Bear Lake County. It has been going on since Christian Wallentine was the County Sheriff over 100 years ago. This bill facilitates a mutual aid agreement between Utah and Idaho regarding emergency responders who cross state borders in response to an emergency. It also creates damage limits in civil suits resulting from cross-border action. The bill only takes effect when Idaho enacts a reciprocal law.

(In case you wondered, this summary was prepared by Sheriff Wallentine's great great grandson, Ken. While doing some genealogy I discovered that Sheriff Wallentine was one of the witnesses at my great great grandfather, Solomon Wixom's, wedding. Small world. MWN)

## **EMINENT DOMAIN AMENDMENTS**

### **SB 81**

**Sen. Lyle Hillyard**

This bill provides a method for each party to make an offer of settlement giving both time limits and manner of response. If the judgment of total compensation awarded to the defendant is less than what was offered by the plaintiff then litigation expenses will be awarded to the plaintiff of 1/3 of the offer amount but not more than \$50,000. However, if the award is larger than the plaintiff's offer, litigation expenses of 1/3 the amount of the award up to \$50,000 for a single defendant or \$100,000 for multiple defendants shall be awarded. On the other hand, if both parties have made offers of settlement and the compensation awarded is between the two amounts, no litigation expenses will be awarded either party. Finally if a party does not make a settlement offer, no litigation expenses will be awarded to them and the other party is limited to an award of litigation expenses to the sum they offered in settlement.

## **SPECIAL SERVICE DISTRICT AMENDMENTS**

### **SB 84**

**Sen. David Hinkins**

SB 84 modifies the former prohibitions against withdrawing area from a special service district if the district had outstanding bonds, notes, or contractual obligations. This bill allows such a withdrawal if each bondholder or obligee consents to the withdrawal and if adequate provisions are made by the district for the payment of the bonds, notes, or contractual obligations.

## **PROSECUTOR APPEALS FROM JUSTICE COURT**

### **SB 91**

**Sen. Daniel Liljenquist**

This is a legislative fix to our state supreme court's decision in Salt Lake City v. Hon. McCleve, 2008 UT 41, interpreting the Justice Court appeal statute, Utah Code Ann, §78A-7-118. McCleve held that where there was a suppression of a breath test in a DUI case the prosecutor could appeal that suppression order, but, if the District Court affirmed the Justice Court suppression order, the entire DUI count was required to be dismissed, even if other evidence, like a driving pattern showing impairment and SFSTs showing impairment, was collected without a violation of any constitutional right. Under this bill, in the circumstance above, even if the District Court affirms the Justice Court suppression order, the prosecution may continue its prosecution on the remaining

unsuppressed evidence because any order excluding evidence that the prosecutor certifies impairs continued prosecution in a class B misdemeanor may be appealed. This change not only applies to DUIs, it applies also to all class B misdemeanor cases originating in Justice Court. However, for class C misdemeanors and infractions, the rule in McCleve applies, i.e., the prosecutor must certify that the suppression order prevents a continued prosecution, and if the District Court affirms the Justice Court suppression order, the entire count must be dismissed.

## **FARMLAND ASSESSMENT ACT AMENDMENTS**

**SB 97**

**Sen. David Hinkins**

This bill allows property that had previously qualified for greenbelt assessment to continue to receive greenbelt treatment when the property's agricultural use temporarily lessens or ceases, due to participation in a reforestation plan.

## **RESTRICTING THE MOVEMENT OF A MOTOR VEHICLE**

**SB 102**

**Sen. Brent Goodfellow**

This bill provides that the maximum fee that a vehicle immobilizer (anyone who places a "boot" on a vehicle) may charge to remove the boot may not exceed:

- \$75 for the first 24-hour period after the boot is placed; plus
- \$25 for each additional 24-hour period.

The maximum fee that may be charged to remove a boot may not exceed \$150 per instance.

## **ADVERSE POSSESSION OF REAL PROPERTY**

**SB 103**

**Sen. Stephen Urquart**

The legislature added a metropolitan water district to the list of government entities that cannot have their property taken by adverse possession, prescriptive use or acquiescence. It specifically refers to water facilities and water conveyance rights-of-way or corridors.

## **REVISOR'S STATUTE**

**SB 110**

**Sen. Margaret Dayton**

The Revisor's statute makes many technical and structural changes throughout the Utah Code. One of these changes, fixes the incorrect reference to discharge of a firearm in Utah Code 78A-6-702,

Serious Youth Offender. The statute previously referred to a felony violation of 76-10-508.1, Discharge of a Firearm, as one of the offenses requiring prosecution under the Serious Youth Offender statute. However, because there is no felony violation of Discharge of a Firearm, the reference was corrected to 76-10-508.1, Felony Discharge of a Firearm.

## **MOTOR VEHICLE ACCIDENT REPORTS**

**SB 114**

**Sen. Dennis Stowell**

This bill requires an officer who investigates a traffic accident resulting in injury or death to any livestock, to record on the accident report whether the accident occurred on a livestock highway. The officer must also make arrangements with the owner of the livestock to deliver, mail, e-mail, fax, or otherwise provide a copy of the accident report to the owner of the livestock, or advise the owner where a copy of the accident report may be obtained.

## **SPECIAL ELECTIONS MODIFICATIONS**

**SB 119**

**Sen. Howard Stephenson**

This bill prohibits a local political subdivision from holding a local special election for a bond, levy, leeway, or sales tax issue without at least two-thirds of all members of the local legislative body calling the local special election.

## **DISARMING A PEACE OFFICER AMENDMENT**

**SB 120**

**Sen. David Hinkins**

Taking a Conducted Energy Device (also known as a Electronic Control Device) away from a peace officer is a third degree felony. This includes TASER® devices and similar weapons. Don't you just get a charge out of this bill? Remember, it's the amps, not the volts.

## **EMINENT DOMAIN REVISIONS**

**SB 122**

**Sen. Stuart Adams**

This bill merely adds the ability of entities to exercise eminent domain to provide access from highways and sewage services to developments which had not been specifically provided for under the statute.



## **MILITARY INSTALLATION DEVELOPMENT AUTHORITY MODIFICATIONS**

**SB 124**

**Sen. Jerry Stevenson**

This bill extends to a Military Installation Development Authority the ability to impose a resort communities tax and to contract with the federal government, another public entity or other authorized source. It also exempts land in a project area of MIDA from certain statutes including land use provisions. The bill makes some other changes most notable of which is that the funds received by the Authority are made non-lapsing.

## **INTANGIBLE PROPERTY AMENDMENTS**

**SB 125**

**Sen. Curtis Bramble**

Article XIII, § 2 of the Utah Constitution requires that all non-exempt tangible property in the state be assessed and taxed at fair market value. Because this constitutional mandate only applies to tangible property, defining intangible property is critical to the tax assessment process. SB 125 expands the definition of intangible property to include “a renewable energy tax credit or incentive.”

## **SUBDIVISION AMENDMENTS**

**SB 126**

**Sen. Stuart Adams**

This bill amends provisions in sections 10-9a-608 and 17-27a-608 relating to subdivisions in cities and counties. The amendments provide that, unless a local ordinance provides otherwise, the normally required public hearing is not required and a land use authority may consider at a public meeting an owner's petition to vacate, alter, or amend a subdivision plat if:

(a) the petition seeks to:

- (i) join two or more of the petitioning fee owner's contiguous lots;
- (ii) subdivide one or more of the petitioning fee owner's lots, if the subdivision will not result in a violation of a land use ordinance or a development condition;
- (iii) adjust the lot lines of adjoining lots or parcels if the fee owners of each of the adjoining lots or parcels join the petition, regardless of whether the lots or parcels are located in the same subdivision;
- (iv) on a lot owned by the petitioning fee owner, adjust an internal lot restriction imposed by the local political subdivision; or
- (v) alter the plat in a manner that does not change existing boundaries or other attributes of lots within the subdivision that are not:
  - (A) owned by the petitioner; or
  - (B) designated as a common area; and

(b) notice has been given to adjacent property owners in accordance with any applicable local ordinance.

The bill also amends the definition of subdivision in sections 10-9a-103 and 17-27a-103 to provide that a subdivision does not include “a bona fide division or partition of land by deed or other instrument where the land use authority expressly approves in writing the division in anticipation of further land use approvals on the parcel or parcels.”

## **PUBLIC ASSISTANCE FRAUD AMENDMENTS**

**SB 127**

**Sen. Howard Stephenson**

Amends 76-8-1203, to require that both earned and unearned income be disclosed when an individual applies for public assistance, as well as any other material fact or change in circumstance that may affect the determination of the applicant’s eligibility to receive public assistance benefits or that may affect the amount of benefits for which the person is eligible. A knowing, intentional or reckless violation of the section can be anything from a class B misdemeanor up to a 2<sup>nd</sup> degree felony, depending on the value obtained or attempted to be obtained.

## **COORDINATION OF REMOVING, RELOCATING, OR ALTERING UTILITIES**

**SB 137**

**Sen. Daniel Liljenquist**

This bill provides that when a public agency determines to engage in a construction project on a public highway that may require the removal, relocation, or alteration of a property belonging to a utility, the public agency shall:

- Contact an utilities association formed for receipt of notice of excavation activities so as to identify each utility company that may have facilities in the area of the construction project. Electronic notice shall be given to each utility company so identified.
- The notice is to be made as early as practicable and at least 30 days before the preliminary design or project development meeting, before issuance of a request for proposal for a design-build project or after a change in scope of a design-build project and is to include specific information about the construction project that is included in the statute.
- The public agency shall permit a utility company to participate in the preliminary design or project development meeting, or similar meeting at which the project design is addressed. Not less than 30 days after giving notice to the utilities, the public agency must provide the utility company an opportunity to meet with the public agency so as to allow the utility company to:
  - review project plans;
  - understand the objectives and funding sources for the proposed project;

- discuss recommendations from the utility that may reasonably minimize costs to the utility, limit the disruption of utility company services, or eliminate or reduce the need for present or future utility facility removal, relocation, or alteration; and
- provide reasonable schedules to enable coordination between the contractor and the utility company during the construction.
- A utility company notified under this statute shall coordinate with the public agency concerning necessary utility work.
- If a public agency provides a utility company with reasonable opportunities to meet in accordance with this statute, the utility company's failure to meet does not affect the public agency's ability to proceed with the project.

This statute does not affect a public agency's authority over a public right-of-way, including any rule, ordinance, order to relocate a utility or other valid provision governing the use of the public right-of-way.

## **GRAMA REVISIONS RELATED TO REVIEW OF ETHICS COMPLAINTS**

**SB 138**

**Sen. John Valentine**

Records received by or generated by or for the Independent Legislative Ethics Commission are regarded as private except for the summary data report and any other document classified as public under legislative rule. Similar records of a Senate or House Ethics Committee are also private unless the record is classified as public under legislative rule.

## **JUVENILE DETENTION AMENDMENTS**

**SB 140**

**Sen. Jon Greiner**

“Direct file” cases refer to murder and aggravated murder committed by 16 and 17 years old, as well as felonies committed by minors who have previously been committed to a secure facility by the juvenile court and have been under the jurisdiction of the Juvenile Parole Board.

First Substitute SB 140 does not make any changes to current law— it simply clarifies the original intent of the legislature regarding the detention of minors and the filing of criminal charges by information in direct file cases. This bill was intended to make sure that language of the statute accurately reflects the intent as well as the current and the historic application of this law.

The amendments in this bill make it clear that these cases originate in the district court, that the district court has exclusive and original jurisdiction over all of these cases, and that because these minors are under the jurisdiction of the district court they are to be detained in adult facilities.

**Effective date: March 22, 2010 – upon signing by the Governor.**

## GRAND JURY AMENDMENTS

**SB 143**

**Sen. Daniel Liljenquist**

The purpose of this bill is to make more available to prosecutors a grand jury for use in cases where the target is a public official, a candidate or other high profile person. As we have learned by difficult experience, it is very hard to file criminal charges against a political figure without public criticism that is simply a “political prosecution”. It is hoped that at least a finding of probable cause by a grand jury will lessen the impact of such criticism. Section 77-10A-2 which deals with ordering of a grand jury by the panel of judges is amended to require those judges to consider the following: “in determining whether good cause exists...the panel shall consider, among other factors, whether a grand jury is needed to help maintain public confidence in the impartiality of the criminal justice process”. This is a not-too-subtle message that grand juries should be made available in high profile politically sensitive cases.

There is also a change of the documentation required to be used by a prosecutor requesting a grand jury. A written certification may be submitted to the panel which states that, in the prosecutor’s judgement, a grand jury is necessary. The certification need not contain any information which might create a risk of destruction of evidence, flight, damage to reputation or privacy etc. That certification is then accompanied by a statement of facts in support of the need for the grand jury. The statement of facts is sealed by the supervising judge. Thereafter, if the panel does not order the summoning of a grand jury or the grand jury does not return an indictment, the prosecutor may release to the public a copy of the written certification (but not the statement of facts in support) if in the prosecutors judgment the release does not create a risk of the concerns about flight, reputation, etc.

Because election laws are misdemeanors but are very high profile, municipal prosecutors have also been included in the grand jury statute.

There is a possible ambiguity in subsection 1 of Section 77-10A-12. That subsection says “the State may be represented by any grand jury summoned in the state by” and then list the attorney general, DA, CA and now municipal attorney. Read in context however it is clear that this only means that a municipal prosecutor in Salt Lake could appear before a panel of judges or grand jury sitting in Ogden because there are not that many grand juries going in the state at any given time. However the Salt Lake City prosecutor would be limited to representing the State only in cases in which the prosecutor otherwise has subject matter and territorial jurisdiction.

The bill also empowers an attorney general, district attorney, county attorney or municipal attorney to elect to have a special prosecutor appointed by the supervising judge which special prosecutor would serve at the expense of the governmental entity supporting the electing prosecutor. It provides that the prosecutor’s supporting governmental entity shall reimburse the state for expenses occurred in such an appointment.

The grand jury issue is going to be a matter of study during the interim. The question we will be looking at is whether a generally available grand jury system would be economically feasible in

the State of Utah. Any prosecutors with grand jury experience are welcome to give input as soon as possible.

## **POSTCONVICTION REMEDIES ACT AMENDMENTS**

**SB 154**

**Sen. J. Stuart Adams**

After a year and a half of contending with a plethora of problems arising out of factual innocence petitions, and with the approval and support of the Rocky Mountain Innocence Center, this bill helps, as follows:

- it brings all factual innocence petitions under the initial gatekeeper scrutiny / post conviction review provisions of Rule 65C, Utah Rules of Civil Procedure;
- it raises the threshold bar for factual innocence petitions;
- it clarifies procedures to be used in hearings;
- it requires separate filings of factual innocence claims from other post conviction claims; and
- it has retroactive application to petitions now pending in various courts across the State.

**Effective date: March 25, 2010 – upon being signed by the Governor.**

## **ANTI-TRUST ACT AMENDMENTS**

**SB 156**

**Sen. Stephen Urquhart**

The intent of this bill was to clarify that the exemption for municipalities was to include all political subdivisions, as long as their conduct was authorized and directed in accordance with the state action doctrine of federal anti-trust law. It also clarifies that local political subdivisions are not subject to economic damages if an anti-trust case is pursued. This was to assist in the clarification of issues in pending litigation. (Due to pending litigation, any editorial comments will be withheld.)

## **GAMBLING AMENDMENTS (2009 LEGISLATIVE SESSION)**

**SB 169**

**Sen. D. Liljenquist**

**Effective date: April 1, 2010.**

Fringe Gambling. This bill was created to address gambling that is designed to skirt the law by being on the “fringe” of other lawful activities, and is currently difficult to prosecute. The bill defines “fringe gambling” as “any gambling, lottery, or video gaming device which is: (I) given,

conducted, or offered for use or sale by a business in exchange for anything of value; or (ii) given away incident to the purchase of other goods or services.”

The bill recognizes that some legitimate lottery or gaming pieces are given out (such as McDonald’s Monopoly game), and therefore creates an exception for “promotional activity which is clearly occasional and ancillary to the primary activity of the business.”

The bill was passed during last year’s session, but was given a delayed effective date and thus becomes law this year.

## **SUSPENSION OF DRIVING PRIVILEGES**

**SB 170**

**Sen. Lyle Hillyard**

Amends 41-6a-1715, Careless Driving, to provide that a sentencing court, following a conviction of Careless Driving, may, in addition to other penalties, order revocation of the convicted person's driver license for up to one year if the violation caused or resulted in the death of another person.

Also amends 76-5-205, Manslaughter, and 76-5-206, Negligent Homicide, to add the following language:

“In addition to the penalty provided under this section or any other section, a person who is convicted of violating this section shall have the person's driver license revoked under Section 53-3-220 if the death of another person results from driving a motor vehicle. The court shall forward the report of the conviction resulting from driving a motor vehicle to the Driver License Division in accordance with Section 53-3-218.

All these last two amendments accomplish is to include notice of the drivers license revocation in the two statutes. 53-3-220 already mandated the loss of driving privilege upon conviction of either Manslaughter or Negligent Homicide resulting from driving a motor vehicle.

## **LOCAL DISTRICT TAXING AUTHORITY AMENDMENTS**

**SB 172**

**Sen. David Hinkins**

This bill prohibits local districts that do not have elected boards from levying and collecting a property tax unless the tax is approved by the voters or the appropriate legislative body.

## **GOVERNMENTAL ACCOUNTING AMENDMENTS**

**SB 191**

**Sen. Lyle Hillyard**

Most of this bill applies to the State, but the bill provides a way of determining distribution when a county repeals a tax under Section 59-12-802 (Rural County Health Care Facility Tax) or a city repeals a tax under Section 59-12-804 (Rural City Hospital Tax).

## **COMMUNITY DEVELOPMENT AND RENEWAL AGENCY AMENDMENTS**

**SB 197**

**Sen. Curtis Bramble**

This was primarily a house cleaning bill, however, it:

- clarified a public entities' ability to assist with development in urban renewal projects;
- clarified provisions relating to the payment of tax increments;
- expanded the ability to loan tax increment funds from one project area to another, with limitations to ensure reimbursement;
- amends provisions relating to the funds allocated for housing; requires a review to certify a project area budget;
- allows the successor taxing entity to enforce agreements; and
- limits the time period for individuals or entities to contest budgets, budget amendments, resolutions, and agreements.

## **ECONOMIC DEVELOPMENT INCENTIVE AMENDMENTS**

**SB 198**

**Sen. John Valentine**

Under current law private business entities may receive tax credits by locating within specific and designated project zones and areas. This bill now provides that local governmental entities and community development and renewal agencies may also now claim a refundable economic development tax credit. This bill sets forth the procedures to claim those tax credits as well as the creation of the economic development zones. The bill also addresses the expenditures of those funds received as a tax credit.

## **MIDTERM VACANCY AMENDMENTS**

**SB 204**

**Sen. Benjamin McAdams**

This bill defines "filing deadline" as the final date for filing a declaration of candidacy and a certificate of nomination and provides procedures for obtaining a position on the ballot for an office

of senator, if a vacancy in the office occurs after the filing deadline but before September 1 of an even-numbered year in which the term of office does not expire. The bill also requires the lieutenant governor to provide notice of a vacancy and establish a filing deadline. It also provides that a vacancy in the office of senator be filled for the unexpired term if the vacancy occurs on or after September 1 of an even-numbered year in which the term of office does not expire.

## **PAWN SHOP AMENDMENTS**

### **SB 212**

**Sen. Jon Greiner**

This is perhaps one of the most quietly helpful bills from the past session. Beginning on January 1, 2011, *all* pawn and secondhand businesses, regardless of the number of transactions, participate in the state register of merchandise and pawned items. This will be a great boon to property crimes detectives. The merchant is strongly encouraged to participate in electronic reporting. There is a \$50 per day fee for submitting paper reports.

## **HIGHWAY PROJECT FUNDING – SALT LAKE COUNTY**

### **SB 215**

**Sen. Wayne Niederhauser**

Previously, the Legislature authorized Salt Lake County to impose a  $\frac{1}{4}$  of a  $\frac{1}{4}$  percent local option sales and use tax to fund transportation needs in the County. The Legislature also previously created a County of the First Class State Highway Projects Fund where the revenues from this tax were deposited to pay debt service on certain bonds issued by the State of Utah for highway projects within Salt Lake County. This bill creates a special revenue fund within the County of the First Class Highway Projects Fund entitled the “2010 Salt Lake County Revenue Bond Sinking Fund” which fund will consist of monies transferred into the fund from the First Class Highway Projects Fund by the director of the Division of Finance. The bill directs the County to issue revenue bonds in the amount of at least \$77,000,000, utilizing this tax revenue to fund the County’s debt service on those bonds. The County will enter into an interlocal agreement with the State to transfer \$68,500,000 of the bond proceeds to fund designated State highway projects in Salt Lake County. The County will utilize the remaining \$8,500,000 of bond proceeds to fund road projects in unincorporated County along 2300 East, and also in Murray, Riverton and Salt Lake City as specified in the bill.

## **ABSENTEE VOTING BY MILITARY PERSONNEL AMENDMENTS**

### **SB 216**

**Sen. Benjamin McAdams**

This bill allows an overseas military voter to apply for an absentee ballot electronically and authorizes a county clerk to accept a ballot application for one general election instead of two general elections.



## **INCREASE IN SURCHARGE ON FINES**

**SB 217**

**Sen. Scott Jenkins**

This bill increases the surcharges on criminal fines and penalties from 85% to 90% and requires that funds generated by the increase be used for enhanced law enforcement in areas with halfway houses. CCJJ is to administer a restricted account into which the new funds will be deposited and law enforcement agencies may apply to receive funds from the new account based on the number of halfway house beds in their jurisdiction.

## **ENGINE COOLANT BITTERING AGENT ACT**

**SB 218**

**Sen. Michael Waddoups**

This bill enacts the Engine Coolant Bittering Agent Act in Title 19 of the Environmental Quality Code. The bill requires engine coolant sold in the state after January 1, 2011, to contain a bittering agent. The bill specifically prohibits inconsistent regulation by political subdivisions.

## **CRIMINAL NUISANCE AMENDMENT**

**SB 219**

**Sen. Jon Greiner**

76-10-806, which has been on the books for many years, provides that a city or county attorney or the Attorney General may bring a civil action for the abatement of a nuisance. This bill seeks to put some teeth in the enforcement of orders issued in such actions. The bill enacts new section 76-10-806.5 which provides that a person who knowingly violates any judgment or order abating or otherwise enjoining a public nuisance as defined in 76-10-803, is guilty of a class B misdemeanor.

## **INTERLOCAL ENERGY AMENDMENTS**

**SB 227**

**Sen. Curtis Bramble**

This bill allows certain Energy Services Interlocal Entities to provide service outside their municipal members' boundaries under certain circumstances; and addresses the Public Service Commission' role in the provision of certain service by an energy services interlocal entity.

## **JOHN MOSES BROWNING COMMEMORATIVE DAY**

**SB 247**

**Sen. Mark Madsen**

Once a suitable date was identified, no legislator, literally, voted against this bill honoring John Moses Browning Day on January 24, 2011. That would have been akin to voting against apple pie and motherhood. Browning held the ubiquitous honor of having designed and produced his own guns at age 13. He held over 120 patents at the time of his death. Virtually every handgun in police service use today is based on a Browning telescoping bolt slide design. Browning revolutionized military weaponry by the invention of the gas-operated machine gun. Many Remington, Savage, FN, Colt and Winchester firearms were designed by John Browning. That his 100 year-old designs remain substantially unchanged and are in wide use throughout the world is a testament to his genius. For those troubled by firearms, Browning's wealth funded many of Utah's colleges and universities and his family collection of fine European art has largely been donated to Utah institutions. Browning's last pistol design was the Browning High Power. Question: if it was less powerful than its predecessor, the Browning-designed 1911 .45 ACP, why did Browning call it the "High Power?"

## **BAIL BOND ACT AMENDMENTS**

**SB 252**

**Sen. Dennis Stowell**

There has been a serious question as to the procedure to be followed when a bail bond surety company fails to pay a judgment within 15 days after service of notice of the judgment. The statutory procedure is for the Insurance Commissioner to suspend the company's license. There has, however, been a 5 day grace period which the insurance department has extended to bail bond sureties rather than immediately suspending the license. This has worked well but has caused anxiety with the regulating agency because there was no statutory to do so. Bail bond sureties decided to run legislation to come up with an alternative. David Walsh of the Salt Lake County District Attorney's Office (and a valuable member of SWAP-LAC) met with the sponsor and the bondsmen to come up with the procedure prescribed in the substitute bill. The solution was to simply give statutory authority for the 5 day grace period and essentially legalize the practice which has worked in the past. Those changes will be found in 31A-35-504.

## **DNA MODIFICATIONS**

**SB 277**

**Sen. Stuart Adams**

This bill requires that upon booking for any violent felony that the jail personnel collect a DNA sample when that sample is not already on file. The bill also requires that upon conviction this person also pay a \$150 collection fee. In fact, the fee for all collections went from \$100 to \$150. The fee is to be split with \$25 staying with the collecting agency and the other \$125 going to the Utah Department of Public Safety for testing the specimens.

The bill also requires that the specimen not be processed until the defendant is bound over at preliminary hearing (waives preliminary hearing) or a grand jury issues an indictment. The bill also creates criminal penalties for misusing the specimen and not properly destroying the specimen. Any one involved in the processing should become aware of these procedures so that they avoid possible criminal penalties.

## **JOINT RESOLUTION ON COMBATING AND REDUCING GANG ACTIVITY**

### **SJR 2**

**Sen. Luz Robles**

Joint resolution on combating and reducing gang activity

This resolution urges state and local governments to take a comprehensive, collaborative, and community wide approach to combat and reduce gang activity. It acknowledges the importance of sports, arts, academics, targeted counseling, and employment programs as a means to counter gang recruitment.

## **MASTER STUDY RESOLUTION**

### **SJR 15**

**Sen. Scott Jenkins**

This joint resolution gives the Legislative Management Committee 249 items of study that can be assigned to various interim committees. The interim committees will make recommendations for legislative action to the 59<sup>th</sup> Legislature. Some representative studies included among the 249 items of study are studies related to e-mail communications and the Open and Public Meetings Act; an update to the Public Officers and Employers Ethics Act; the use of electronic signatures for initiative and referendum petitions; the cost impact of the death penalty; substantive modifications to the expungement law; the Indigent Defense Act and its application to indigent defense resources; whether to allow tax increases not approved by voters to be subject to referendum and initiative procedures; fair practices for equitable and proper appraisal services when the state is in the process of acquiring rights-of-way and condemning properties for state use; zero based budgets for state agencies; and whether to require a “tentative agenda” at least 72 hours prior to a public meeting.

# UTAH RULES OF CRIMINAL PROCEDURE

## RULE 15A

### Scientific, Lab, and Analytical Reports

Motivated by the impending passage of HB 251, Admission of Affidavits into Evidence, the Rules of Criminal Procedure Committee approved, and the Supreme Court adopted, effective 26 February, 2010, Rule 15A, Utah Rules of Criminal Procedure. This Rule takes Justice Scalia at his word in Melendez-Diaz v. Massachusetts, 557 U.S. \_\_\_\_ 2009, [United States Supreme Court, 25 June, 2009] , and creates a notice-and-demand procedure. The rule provides that a sworn copy of a scientific report shall be admitted as prima facie evidence of the report's contents and conclusions, and of the chain of custody pertaining to any sample tested, unless the defendant files a written demand that the prosecution produce the preparer of the report or the chain-of-custody witnesses for cross-examination at trial. Failure to timely file a written demand as specified in the Rule waives the defendant's right to challenge the admissibility of the report or of the chain of custody on the grounds that the preparer of the report or the chain-of-custody witnesses did not testify at trial.

**Effective date: February 26, 2010.**

# **RETIREMENT SYSTEM CHANGES**

## **POST-RETIREMENT EMPLOYMENT BENEFITS**

**SB 43**

**Sen. Daniel Liljenquist**

## **NEW PUBLIC EMPLOYEES' TIER II CONTRIBUTORY RETIREMENT ACT**

**SB 63**

**Sen. Daniel Liljenquist**

On the following pages is (a) a summary of state retirement system changes that resulted from passage of the above two bills and (b) a table which allows comparison of the various systems. Both the summary and the table were prepared by the Office of Legislative Research and General Counsel and were copied and included here for your information. Neither the Attorney General's Office, UPC nor SWAP had any involvement in the preparation of the summary or comparison table.

Compared to early versions of the bills, the final versions will have relatively minor impact on those of us who are already in the retirement system. There are, however, significant changes. Regardless of whether they are getting close retirement or are still years away, all public employees need to familiarize themselves with the changes in order to be able to make the best and most informed decisions for themselves and for their loved ones. The changes will be of particular interest to and will have imminent impact upon those public employees who had hoped to retire soon and then return to work for an agency that participates in the state retirement system; the infamous and much envied "double dippers." For answers to specific retirement questions, we urge you to read the full text of the bills and to contact either the human resource department where you work and/or the Utah Retirement System.

Those who will be most effected by the changes to the retirement system are people who will go to work for participating employers after July 1, 2011. The current, defined benefit system will be very much changed for them.

[Link to the summary of retirement system changes](#)

[Link to the retirement system comparison chart](#)

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